



## CHAPTER 5

### **Investment Law, Business Organizations, and Foreign Exchange Availability**

#### **5.1 Investment Law**

The Polish government strongly support and encourages foreign investments. Most laws are being reformed to accommodate foreign investment since 1990 when a democratic government was elected. Those legislations are: the Foreign Investment (Joint Ventures) Act, Foreign Participation Act, Foreign Exchange Act, Income Tax Act and several regulations on banking reforms. The government aims at inflow capital investment and business expertise from overseas to help boost the free market economy.

This has resulted in a considerable inflow of foreign capital to Poland. Above all, there has been a significant increase in the number of foreign companies doing business in Poland, with an official figure of 19,737 foreign and joint venture companies given by the Central Statistic Office for December 1994. In 1994, the largest amounts of foreign investment in Poland came from American corporations, and then from multinationals, and those based in Germany, Italy and France.

During the years 1990-1994 private foreign companies invested US\$ 4.3 billion in their Polish operations.<sup>59</sup>

---

<sup>59</sup> The Foreign Trade Research Institute, "Poland: Your Business Partner", Warsaw, 1996, p. 89.

Foreign investors may engage in business in Poland either by way of buying shares in a company during the course of privatization or forming a newly registered company. The newly reformed legislation as well as several Investment Protection Agreements which Poland signed with over 50 foreign countries world-wide contains clauses that promotes and gives guarantees to foreign investors on various issues such as against nationalization and assets expropriation, repatriation of funds out of the country, exchange inconvertibility and mode of dispute resolution.

According to the current laws, all types of industry are generally open to foreign investors. However, a business permit is required from the Ministry of Ownership Changes when a joint venture with foreign participation engages in the following business.<sup>60</sup>

- Management of seaports and airports.
- Real estate agency sales and services.
- Defense industry not subject to license requirement.
- Wholesale trade in imported consumer goods, and
- Legal advisory services

All land (other than for agricultural purposes) belongs to the State. Foreign investors may acquire land in Poland for their business either by way of buying or take-on lease. Having the ownership or perpetual lease (between 40 to 99 years leasehold) of land are however subject to permission from the Ministry of Interior. Short-term lease is not subject to any official approval, it can be done through the negotiation between parties concerned. There are no restrictions for foreign investors to own accommodation places.<sup>61</sup>

---

<sup>60</sup> Price Waterhouse, "Doing Business in Poland", USA, 1998, p. 30.

<sup>61</sup> Op., cit., p. 93 and see also Polish Agency for Foreign Investment, p. 23

To encourage foreign investments, the laws provides protection of trademarks and intellectual property according to international standard.<sup>62</sup> The owners of trademarks or intellectual property may register their intangible assets with the Patent Office for the protection time period as follows:

Patent for inventions	15 years
Patterns	5 to 10 years
Trademarks	10 years
Copyrights	25 years after the death of owner

The government has in 1990 and 1993 amended the Bankruptcy and Insolvency Law to meet international standards by allowing financial restructuring of enterprises out of court procedures to help enterprises which face short term financial liquidity.<sup>63</sup>

## **5.2 Investment and Tax Incentives**

Presently, there are three (3) forms of incentives granted to qualified companies: investment incentives in a form of deduction of qualifying investment capital expenditures from pre-tax profits for corporate income tax purposes, such as cost of machinery, construction of buildings, means of transportation and infrastructures; special economic zone for entities investing in the special economic zone as stipulated by the Council of Ministers may obtain tax exemption or reduction. The recently opened 11 special economic zones have been established on 14 October 1997. Tax relief is normally granted up to 10 years and after

---

<sup>62</sup> Polish Agency for Foreign Investment, p. 25

<sup>63</sup> Ibid., p. 26

the expiry date of this period, up to 50% (75% in some region) of the income tax may be exempted; bonded warehouse and customs free zone are also available. The business operators may move goods from one location to another without paying customs duties.<sup>64</sup>

### 5.3 Business Organizations and Regulations

The principal forms of organizations which are available for engaging in the business under the Polish laws are **joint stock company, limited liability company, representative office**, partnership and sole proprietorship. However, according to the law only the first two forms are opened to foreign participation. A representative office of a foreign company is permitted to do business in Poland only to certain extent.

#### 5.3.1 Joint Stock Company, so-called **Apolka Akcyjna-S.A.**<sup>65</sup>

This form of company is normally established to engage in medium to large size of business with a large number of participants, state owned companies, insurance companies or banks. A joint stock company is regulated by the Commercial Code of 1934 and the Joint Ventures Act of 14 June 1991, the laws which have been enacted to regulate private companies with foreign participation in Poland.

The joint stock company has its own legal personality separated from its shareholders. The shareholders of this type of entity have limited liability to the extent of their unpaid amount remained on their shares. It can be formed through the Registry Court for entry into

---

<sup>64</sup> Price Waterhouse. "Doing Business in Poland", USA, 1998, pp. 32-35

<sup>65</sup> Ibid., pp. 70-75

the Commercial Register by the joint subscription of the application by at least three (3) founders.

A joint stock company may be processed in three different ways as follows:

- Via public offering. It should be noted that the offering of shares to the public requires a permission from the Securities Council. The founders must deposit an amount equal to 1/20 of the share capital to the appropriate district court where the offering is to be made. The deposit is regarded as a security for any claims which could be raised against the founders during the period of incorporating the company for which the company has no legal existence. It is however refundable after the company has been incorporated or six months thereafter if the company is not incorporated or six months have been elapsed without company formation.

- By the founders taking all the shares themselves
- By a direct offer to a potential buyer

As for the capital payment for the shares, it is required to be made via the National Bank of Poland or other state banks as approved by the Finance Minister. Shares can be issued in various types; ordinary shares, preferred shares and bearer shares. The laws allow foreigners to own all shares in a joint stock company.

The company is managed and represented by the Management Board which is composed of one or more members elected by the shareholders meeting. In a large sized company, a Supervisory Board may be appointed to review certain function of the Management Board.

### **5.3.2 Limited liability company, so-called, Spolka z ograniczona<sup>66</sup>**

This is another type of a joint venture that permits foreign participation. It is also governed by the Commercial Code of 1934 and the Joint Ventures Act of 14 June 1991. The application for entry into the Commercial Register is required to be submitted to the Registry Court and the Ministry which involves in the supervision of the business of such company.

Limited liability company is normally established by investors who are engaged in small to medium size businesses with a small number of shareholders. This type of company may be wholly owned by one person. It has separate legal status from its founders and shareholders.

The procedures on incorporating the company is almost identical to the procedures set forth for the joint stock company.

The company is represented and managed by the Management Board and the Supervisory Board. Increase and decrease of capital is possible by resolution of the shareholders meeting.

### **5.3.3 Representative office<sup>67</sup>**

Foreign companies may establish a representative office in Poland in three different forms:

- A branch office , so-called **Oddzial**

---

<sup>66</sup> Ibid., pp. 75-78

<sup>67</sup> Ibid., pp. 80-81 and 129-130.

- A technical information office, so-called **Biuro informacji technicznej**

- A supervisory office, so-called **Biuro nadzoru**

A branch office is allowed to perform business activity in view of profits seeking only on the following areas: foreign trade, transportation, travel service and cultural services. It may also act as a liaison office in propagating the information and promoting the business for its head office overseas; supervising contract performance and make investment. However, it is prohibited to produce or store goods. Establishment of a branch office is subject to prior approval from the Ministry of Foreign Economic Relations.

A technical information office is restricted to only the dissemination of product information and promoting the exchange of technology. It may not be involved in the business activity in view of profit seeking nor involve in negotiation for contract. Establishment of the technical information office is also subject to prior approval from the Ministry of Foreign Economic Relations.

A supervisory office is restricted to only the quality control activity for its head office overseas which includes supervising activity for implementation of a business contract by Polish contractor. Approval is not required for this type of establishment.

#### **5.4 Foreign Exchange Availability**

The authorities which are involved in foreign exchange control are the National Bank of Poland, Ministry of Finance, Ministry of Foreign Economic Relations, and Ministry of Ownership Changes. They are

empowered to exercise foreign exchange controls as according to the Foreign Exchange Act, 1989 and the Minister of Finance's Regulations, 1989. The Act supports the principle of freedom of foreign exchange operations, but limits this freedom by mandating that entities obtain a foreign exchange permit for certain operations. As other countries, there are no restrictions on the maximum amount of foreign capital to be brought in for investment in Poland. Capital investment can be repatriated freely in the case of liquidation of the business or expropriation or reduction of registered capital of the company. Profits and dividends from business operation in Poland can also be freely expatriated without permission required. Business operators in Poland are allowed to make payment overseas in the case it acquires services or goods from overseas sources.

The government guarantees against foreign exchange inconvertibility according to the Foreign Investment Law and bilateral investment treaties which the government has entered with foreign countries.<sup>68</sup>

---

<sup>68</sup> Ibid., pp. 38-40 and