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SECTION 1 EXECUTIVE SUMMARY

1.1 Background

The Slovak Ministry of Privatization (SMOP) has requested technical assistance from the United States Agency for International Development (USAID) to assist in the acceleration of the Slovak privatization program. The SMOP has responsibility for controlling the privatization of state enterprises and state joint-stock companies in the Slovak Republic. The technical services provided under the grant are also intended to improve the technical capabilities of the Ministry staff in analyzing and evaluating proposed privatization projects.

The large-scale privatization program in CzechoSlovakia is part of the broad economic reforms aimed at achieving a rapid transformation to a free-market economy. A range of privatization techniques is being employed, from issuance of investment vouchers to CzechoSlovakian citizens (to be exchanged for shares in selected enterprises), to the direct sale of enterprises to foreign and domestic investors and enterprise managers and employees.

The foundation for a stable economy and a productive workforce will be viable, profit-making, privately-owned enterprises. To achieve this, the privatization program must succeed in transforming the maximum number of enterprises from state to private ownership. It is anticipated that a large number of liquidations will occur involving those enterprises with no viable business future. While this may result in increased unemployment and periods of economic instability, it is the ultimate goal of the privatization program to off-set these risks by establishing economically practical enterprises which have a high probability of growth, increased employment opportunities and independence from government subsidy.

1.2 Task Objective

The goal of the privatization program is to ensure that the largest number of viable, state-owned enterprises and entities are successfully converted to privately-held enterprises in the shortest possible time frame.

In support of this goal, the essential work to be performed under this task is to provide the Slovak government with advisors with experience in corporate finance, law, strategic planning, financial analysis, and joint venture development in order to assist in the development of the processes by which state-owned enterprises will be transformed. This would include making recommendations to create an enabling environment for the privatized enterprises; to restructure selected enterprises, if necessary; and to ensure cost effective operations and financial management, proper market planning and positioning, and revenue growth and profit motivation.

To achieve these objectives, the advisory team has performed a needs assessment with regard to the Slovak privatization process to determine the types of assistance needed by the SMOP and the founder Ministries in general, and by the enterprises on specific privatization transactions determined to be of importance by the founder Ministries.

1.3 Strategic Focus

The program of technical assistance to be provided to the SMOP is envisioned as a four-phase process with a certain degree of dependency and refinement between the phases. It is contemplated that the output of each phase will further define the subsequent phases and possibly modify the overall strategy.

The objective of Phase I is to assist the SMOP and the founder Ministries in defining the business procedures and analytical methods to be employed in examining and evaluating privatization projects scheduled to take place in the "First Wave" of privatization undertaken

by the Government. In addition, ad hoc assistance will be provided to appraise the validity of those projects with foreign investors and to assess the need for the development and promotion of foreign investment strategies.

The main objective of Phase II, is to assist the SMOP, founder Ministries, and selected enterprises in the actual implementation of the First Wave of privatization, and to improve the evaluation process that will be used in the Second Wave of privatization. The emphasis in this phase is to provide assistance to the SMOP, the founder Ministries and enterprises on specific transactions and strategies to promote foreign investment.

In Phase III, the contractor will assist the new private owners to utilize free-market concepts, tactics, and business operations in their enterprises. This phase will focus on interventions at the enterprise level to increase the productivity of operations and the efficient use of resources in order to provide the enterprise access to foreign markets and to enable the enterprise to operate in the most cost effective manner.

In Phase IV, the contractor will assist in providing continued improvements to the enterprises in order to further enhance their open-market operations and ability to compete in the international marketplace.

1.4 Terms of Reference

The work activities in Phase I are to be accomplished by financial planners with experience in privatization, mergers and acquisitions, leverage buyouts, law, corporate finance, accounting, and management. These professionals will provide the Ministries with the capacity to select, appraise, value and divest enterprises rapidly that have been designated for privatization. In particular, these financial planners will provide assistance to the SMOP, founder Ministries and selected enterprises on the following specific requirements:

1. Compiling and translating laws, regulations and policies affecting the privatization process;

2. Developing or modifying the evaluation procedures and recommending a consistent methodology for the evaluation of projects;

3. Assessing, defining, and coordinating the roles and responsibilities of the founder Ministries;

4. Developing procedures and approaches for the recruitment of SMOP staff and the definition of the type of advisory services desired;

5. Developing and implementing model transactions to influence the shape of future transactions;

6. Providing ad hoc assistance and advice to the Ministries to analyze the business plans, terms and conditions, and financial statements on selected projects with foreign investors or investment bankers; and

7. Refining the strategies, tactics, and staffing requirements of Phases II through IV.

1.5 Technical Approach

The technical approach to the task was comprised of several fundamental work activities (research and data collection, interviews, analysis) which culminated in recommendations for improved methods of enterprise evaluation as part of the privatization process.

The first work activity involved preliminary research in the following areas:

1. The policies, laws and regulations affecting privatization in the Slovak Republic;

2. The current business climate in the Republic;

3. Other ongoing privatization efforts in the Republic where advice or technical assistance is being provided;

4. The numbers and types of enterprises being offered in the First and Second Wave of privatization; and

5. The overall Ministerial organization and points of contact responsible for the privatization process.

Based upon the results of the research activities, a structured questionnaire was developed which focused on the responsibilities of the Ministries with regard to privatization. The questionnaire addressed the evaluation process employed by each Ministry, the analytical methods and techniques used to evaluate projects, the industries and enterprises critical to the successful implementation of privatization, the foreign investment opportunities and proposals, the types of technical assistance desired by the Ministries (and by the enterprises under their control), and the need for industry and regional assessments.

Interviews were scheduled and conducted with senior officials responsible for privatization in the following Ministries:

- Ministry of Privatization
- Ministry of Economy
- Ministry of Industry
- Ministry of Commerce and Tourism
- Ministry of Construction
- Ministry of Transport and Communications
- Ministry of Forestry
- Ministry of Agriculture

It was determined that since the seven founder Ministries were responsible for the majority of enterprises targeted for the First Wave of the privatization process, they presented the best sample of the overall process. These interviews identified specific First Wave projects that already had foreign investors as well as projects that were in need of attracting foreign investment. In these cases, provisions were made to provide immediate ad hoc corporate finance assistance in their evaluation in order to meet desired deadlines.

1.6 Summary of Findings

The interviews confirmed the need to define and document a consistent procedure for evaluating proposed privatization projects. Each of the founder Ministries had developed its own internal set of procedures based upon broad guidelines received from the SMOP. The SMOP recommended a critical review of certain First Wave projects, to be furnished by the founder Ministries, to ensure the adequacy of the proposed privatization project and the viability of the enterprise during and after the privatization process.

Each of the founder Ministries has identified specific projects, in both the First and Second Waves, which require an evaluation of soundness, an assessment of the foreign interests, or the development of strategies to attract foreign investment. In addition, since more than one privatization proposal may be submitted for a single enterprise, each Ministry needs assistance in objectively evaluating competitive projects for the same enterprise. The Ministries also need assistance in determining appropriate liquidation and reorganization strategies, especially for proposed projects which include only selected operating elements of an enterprise.

The following presents the highlights of the findings. Each of these findings is discussed in detail in subsequent sections of this report.

1. <u>Processing Procedures</u>

   There is a need to define the processing procedures for privatization projects to be reviewed by the SMOP in the First and Second Waves. First Wave projects were reviewed by the SMOP in terms of legal, financial and organizational aspects. For the most part, the SMOP accepted the comments of the founder Ministries with little further evaluation.

2. <u>Evaluation Methods</u>

   In addition to the process requirements, there is a need to define the methods and techniques of analysis to be employed by the SMOP in the evaluation of proposed projects. Each founder Ministry also has requested an evaluation

of the methods they used in the First Wave with a view of improving the process for the Second Wave of proposed projects.

3. Immediate Technical Assistance Needs

Each of the founder Ministries was able to identify 3 to 6 projects that needed immediate technical assistance. A list of these projects is contained in Appendix 4 to this document. These specific transactions involve a range of services which could be grouped into five broad categories: (1) appraisal of the project from a business perspective; (2) assistance in identifying the appropriate investment instrument for specific enterprises to generate capital from domestic or foreign investors; (3) assistance in seeking foreign investors; (4) evaluation of groups of enterprises in an industrial sector in order to determine optimal investment strategies; and (5) assistance in evaluating the viability of specific enterprises.

4. Foreign Investor Relations

The SMOP and the founder Ministries need assistance in defining the methods and procedures for negotiating with foreign investors. A consistent set of procedures will facilitate the negotiation process and serve to define the roles and responsibilities of those involved in the negotiations.

5. Competing Privatization Proposals

There is need to identify and document tactics and procedures necessary for the thorough evaluation of competitive projects for the same enterprise. The competitive projects are typically complex transactions which require thorough analysis to ensure reasonableness of the offer and fairness in the selection of the successful bidder.

1.7 Summary of Recommendations

The recommendations presented in this report have been grouped into three categories of functions and desired services. These categories are (1) improving the evaluation process and methods; (2) providing transactional assistance related to project assessment, investment strategies, and enterprise specific strategic assessments; and (3) establishing an "enabling environment" for the privatized enterprises. Consideration was given to these recommendations as to the level of support required within the time and financing remaining

for the Phase I delivery order, and the proposed work activities which would be most appropriate in Phase II.

The following presents the highlights of the recommended course of action for Phases I and II. The remaining Sections discuss the details of these recommendations.

1. Evaluation Process and Methods:

   (a) Develop an evaluation process and methods for the SMOP with instructions to refine the process and methods to be employed by the founder Ministries;

   (b) Provide assistance in describing methods for negotiating with foreign investors and in promoting foreign investment interest;

   (c) Provide assistance in developing methods to distinguish between competitive privatization projects for the same enterprise; and

   (d) Provide orientation to enterprises in the preparation of projects for the Second Wave.

2. Transactional Assistance:

   (a) Provide ad hoc assistance in evaluating First Wave projects;

   (b) Provide ad hoc assistance in evaluating Second Wave projects with a focus on foreign investor proposals and complex transactions;

   (c) Provide assistance to enterprises in the Second Wave in preparing privatization projects;

   (d) Provide assistance in attracting domestic and foreign investors;

   (e) Perform interventions at the enterprise level for strategic assessments of operations, management, finances, and environmental improvements; and

   (f) On an as-required basis, implement the recommended improvements for specific enterprises.

3. Enabling Environment:

(a) Perform industry and sector analyses of laws, competitive potential, and environmental assessment;

(b) Conduct regional analyses for social, political, and economic impacts; and

(c) Assist in the creation of an enabling environment for implementation of privatization in terms of laws, regulations, and competition.

SECTION 2 EVALUATION PROCESS AND METHODS

2.1 Current Evaluation Process

SMOP

The SMOP is responsible for approving or disapproving proposed privatization projects for enterprises which are submitted by the founder Ministries. In the First Wave, the SMOP was unprepared for the overwhelmingly large number of projects submitted. The SMOP received approximately 1,200 privatization project proposals for 693 enterprises in the First Wave. The actual number of directly competing proposals is unknown because many proposed projects encompassed only certain operating elements of larger enterprises. The SMOP did not catalogue projects upon receipt by type of investor, size of enterprise, or method of privatization. Therefore it was difficult to readily determine the magnitude of assistance required or which enterprises would be critical to the successful implementation of the privatization program in the First Wave.

The SMOP considered the legal, economic, capital, technical, and organization aspects of each proposed project. The primary focus of the SMOP's review was to ensure that the proposed projects were submitted in compliance with the reporting requirements stipulated by the Privatization Law. At this stage, the SMOP did not review or evaluate proposed projects from a business point of view.

In addition to the large volume of proposals, evaluation was made more difficult because proposals were often not submitted in a comparable format. Although SMOP did recommend that proposed projects be submitted in an automated format, outlined in the Automatizovany Privatizacny Projekt, not all proposers followed this recommendation. When questions arose from the legal, financial or organizational reviews, the founder Ministries and enterprise management were queried for responses and clarifications. In the

majority of cases the SMOP accepted the recommendations and comments of the founder Ministries.

To ease the burden of review, the SMOP is evaluating projects in three phases according to the method of privatization suggested by the offeror: (1) projects recommending 97% voucher with no competitive bids are being evaluated first; (2) projects with 97% voucher and competitive bids are in the second phase of evaluation; and (3) projects involving direct sale to a domestic or foreign investor are to be evaluated in the third phase. The more complex and non-traditional methods of sale will also be evaluated in the third and final phase.

The SMOP issued informal guidance to the founder Ministries to assist them in developing their own evaluation processes. The intent of this guidance was to clarify the roles and processes to be used within the SMOP, and it was not intended to dictate a standard review process to the founder Ministries.

Founder Ministries

The founder Ministries are responsible for evaluating the reasonableness of the projects submitted for the enterprises in their sectors. Each of the founder Ministries has developed its own set of internal procedures for the processing and review of projects submitted in the First Wave and, although the procedures differ from Ministry to Ministry, the overall processing has been similar.

Each Ministry appoints a Vice Minister with general responsibility and authority over the privatization process. In most cases, this Vice Minister delegates certain responsibilities to the Chief of the Privatization Department of the Ministry. Each Ministry has also established Branch Commissions whose membership is comprised of internal staff with sector knowledge, legal, technical, financial, and external specialists. These Commissions are organized by sub-sector or by groups of enterprises with similar production methods,

products or services. The members of these Commissions use their knowledge of the enterprises' production capabilities to evaluate the viability of the proposed privatized entity.

The central point of receipt and distribution of the proposed privatization projects within the Ministries is the Department of Privatization. The projects, in some cases, are catalogued within the Ministry and a copy sent to the SMOP for registration. Copies of the project are also distributed internally within the Ministry for comment by the sector involved. If questions or clarification are needed, the offeror's representative is contacted. Once the first stage of review is completed, the project is passed with comment to the Branch Commission for further review. A final decision is made by the Ministry's Board of Privatization which is chaired by the Minister or the Vice Minister responsible for privatization and which includes members of the Ministries of Privatization, Finance, Anti-Monopoly, and Control; trade unions; and enterprise management. Upon completion of the Board review, the project is sent to the SMOP with the comments and signatures of the key personnel of the Board.

2.2 Evaluation Analytical Methods

At present, both the SMOP and the founder Ministries evaluate the projects for form to ensure all the reporting requirements are met. The founder Ministries assess the projects for soundness of the business plan, method of privatization, capital financing, and terms of employment. The Ministries find it difficult to appraise the fair-market value of the enterprise when a foreign partner is involved and to validate the valuation of assets and financial statements contained in the project. They also find it difficult to assess the feasibility of the business plan in terms of market research, market position, and viability of the enterprise to exist after privatization. In some cases, the Ministries seek assistance from local outside sources, such as local consultants, universities, research institutes, and like enterprises in the same industry. However for key enterprises, the Ministries have felt that further review of these projects is necessary.

2.3 Recommended Evaluation Procedure

It is important to establish a set of guidelines and procedures for the evaluation of privatization projects in order to ensure consistency and establish a clear statement of policy and criteria to which all projects will be subjected. This should assist the Ministries in ensuring that the proposals are properly completed and evaluated, and that they are fair and reasonable to all parties.

A multi-stage approach is recommended for use in proposed project evaluation. While the concepts supporting these stages will need to be fully developed and, if appropriate, tailored to individual founder Ministries, in basic form, they are the following:

1. Initial cataloguing and prioritization of projects;
2. Development of criteria for the appraisal of projects;
3.. Steps to be completed in the detailed appraisal of projects; and
4. Mechanism for project approval.

Initial Cataloguing and Prioritization.

Projects should be assessed on a consistent basis and therefore should be grouped into broad categories with differing objectives and approaches to approval. A management information system should be developed to capture relevant data about each proposal as the projects are received by the Ministries. The initial screening of projects should categorize the project by method of privatization and proposed share allocation by the following classification:

1. Voucher Only - 97% of the shares are designated for vouchers;
2. Combined Voucher and Investors - a combination of Vouchers with domestic or foreign investors;

3. Investor Only - direct sale of the enterprise to a domestic or foreign investor; and

4. Composite Projects - more complex share allocations which may involve preferential share issues.[1]

Priority should be placed on those projects involving foreign investors, either combined with vouchers or direct sale, and on composite projects.

The proposed projects should be registered in a management information system for ease of reference. For each individual project, the system should contain data on method of privatization, name of enterprise, name of offeror(s), foreign investor participation, value of offer, and the offerors' valuation of assets, liabilities, properties, rights and licenses, fixed assets, and proposed capital investment. This registration should occur both at the SMOP and the founder Ministries.

Criteria for Approval of Projects.

Listed below are the key areas which should be examined for each project. These criteria have been divided into mandatory tests and discretionary tests.

Mandatory Tests:

1. Proper completion of the documentation;

2. Reserves have been set aside for restitution claims;

3. Compliance with relevant Federal and Republic laws;

4. Unusable property has been properly identified and reserved;

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[1] It is suggested that a more detailed review be conducted on the proposed share allocations for the composite projects. The objective is to identify those proposals which could be reallocated to the combined voucher and investor category.

5. Enterprises in strategic industries should require a provision for government control over certain circumstances, such as a takeover;

6. Compliance with Anti Monopoly regulations; and

7. Acceptable financial liquidity and viability.

Discretionary Tests:

1. Insufficient acceptable number of competitive bids by investors in the tendering process;

2. High profile, large or sensitive enterprises which may need independent, third party appraisals;

3. Detailed analysis of the terms and conditions of the offer with particular focus on the disposition of the existing work force, proposed organizational changes, and employment benefits;

4. Thorough legal review to protect the National Property Fund from subsequent claims;

5. Independent assessments of complex transactions to establish proper valuation of assets and liabilities and fair market value;

6. Quality of the management proposed for the enterprise;

7. Viability of the remainder of the enterprise if a foreign partner is acquiring only a part of the enterprise;

8. Impact of the project on the environment and on the welfare of the community;

9. Need for private finance to fund future investments; and

10. Potential benefits to consumers.

Detailed Appraisal Steps.

The steps to be followed in the analysis of the projects should coincide with the criteria detailed in the mandatory and discretionary tests. For the most part, the mandatory tests

have been applied by the founder Ministries in the First Wave with the exception of financial liquidity and viability. Particular attention should be paid to the discretionary tests when foreign investors are involved. These tests will help to ensure that the proposed privatization project represents the best option for the Republic in terms of value, investment, employment and stimulation of economic conditions.

Mechanism for Project Approval.

The current use of Branch Commission comment and Ministerial Board of Privatization approval, with participation by the SMOP, and Anti-Monopoly, and Control Ministries, appears to be adequate. Each project is reviewed in detail with comments and recommendations provided from the early stages of the approval process. If all the appropriate tests have been applied, the SMOP need only verify the completeness of the project package and will require assistance only on an ad hoc basis.

2.4 Foreign Investor Negotiation Process

Early indications are that the business plans, financial statements, and methods of valuation are not consistent with internationally accepted methods. This makes negotiation with foreign investors less transparent and more difficult. Documents should be translated into internationally accepted formats and the SMOP and the founder Ministries should structure the process so that the foreign investor knows what to expect during negotiations. This will also serve to define more clearly the roles and responsibilities of the various government officials who will participate in the negotiations. For both of these tasks, the SMOP and the Ministries need assistance.

Independent validation of the offerors' proposal should be performed by professionals with international experience in corporate finance, financial and accounting analysis, and

commercial capacity analysis including marketing, logistics and distribution, legal audits, and organizational planning. This type of specialized review will assist the Ministries by providing a sound basis for negotiations.

2.5 Analysis of Competitive Proposed Projects

In the analysis of competitive proposed projects, the use of the discretionary tests should be applied openly and fairly to select the best proposal. The tests can be prioritized in order of importance. For example, the continued employment of the existing work force with adequate enterprise investment programs may be the most critical. The quality of the proposed management team and the capital backing are also important.

A set of procedures needs to be developed to assist the Ministries in evaluating competitive proposed projects. These procedures need to be developed in cooperation with the Ministries in preparation for the Second Wave of projects.

2.6 Project Orientation and Public Relations

Assistance should be provided to enterprises and potential bidders in the proper preparation of privatization projects to include the preparation of business plans, financial statements and investment strategies. The assistance provided would be in the form of training sessions and information exchange. It is envisioned that group training sessions could be held by sector and sub-sector rather than on an individual enterprise basis. A general orientation session may be designed to illustrate the various means to achieve privatization, including inputs from people with privatization experience in other countries.

These sessions would also provide the mechanism for the SMOP and founder Ministries to communicate the various tests that could be performed on the proposed projects. Additionally, the Ministries could present the lessons learned from the processing of the First Wave of projects. The sessions should be followed by a question and answer period to help

clarify the process and requirements.

There is a need for a public relations campaign focused at the general population to promote an understanding of the privatization process and the benefits of being a shareholder of an enterprise. The purpose of the campaign is to educate the people on matters concerning the future direction of the privatization program. The recommendation is to develop a progressive series of press releases for distribution in the local newspapers and for use as spots on local radio shows. In addition, a brochure should be developed for the SMOP to further promote privatization. This brochure could also contain information appropriate for foreign investors.

2.7 Work Plan

The work plan for the completion of the activities for the evaluation process and methods is presented in terms of person days to complete the work and the timing in terms of a Phase I or Phase II activity.

1. Document the evaluation process and methods.

   It is estimated that 20 person days will be needed to complete the documentation of the process and methods to be used for the completion of the projects in the First Wave and to establish the process and methods for the Second Wave. It is recommended that this work activity be completed under the Phase I delivery order.

2. Develop procedures for foreign investor negotiations.

   It is estimated that 45 person days are required to define and document the procedures for the preparation and conduct of negotiations with foreign investors. This work activity should be a priority for Phase II.

3. Develop procedures for evaluating competitive projects.

   It is estimated that 20 person days are required to define and document the procedures to be used in the evaluation of competitive projects. This activity is a priority for the Ministries and should be accomplished in Phase I.

4. Project orientation and public relations.

It is estimated that 2 work days will be required per founder Ministry, for a total of 20 person days, to assist in conducting orientation sessions for enterprises and potential bidders in the Second Wave. It is suggested that this work activity be accomplished in Phase II.

The public relations campaign should begin as soon as possible, preferably in Phase I. It is estimated that 30 person days are required for the development of the initial public relations campaign, excluding materials.

SECTION 3 TRANSACTIONAL ASSISTANCE

3.1 Negotiate with Foreign Investors

Negotiating successfully with foreign investors is at the heart of a constructive privatization program. Numerous proposals have been received from foreign investor groups. Some have been referred to the SMOP, while others remain in founder Ministries for further study.

Neither the SMOP nor the founder Ministries has sufficient experience to review proposals involving foreign investors which puts them at a significant disadvantage in negotiating contract terms with such investors. Foreign advisors with investment banking and accounting skills are needed to help review such plans and advise the Ministry on their value and on the feasibility of their structure. These advisors can also assure that relevant policy issues are addressed, and assist the Ministry in negotiating with the foreign investor. Issues such as additional capital investment, employment assurances, and training local personnel can and should be addressed in a purchase agreement. This can improve the agreement for the Slovak Republic, and reduce the risks if significant aspects are overlooked.

For example, the proposed acquisition by K-Mart of the Prior department stores illustrates various risks that are faced by the SMOP and the founder Ministries. The Ministry of Trade, in negotiating the basic agreement, did not realize that they would not be able to count on K-Mart's representations to invest significant amounts in improvements unless there were a specific contractual commitment to this effect. Similarly, it was important to reach consensus with K-Mart over the issue of employment, so that there will be no surprises for the SMOP once the agreement is approved. In both these areas, outside expertise has been useful in outlining a better approach for the Slovak Republic.

Similarly, the SMOP has been reluctant to approve K-Mart's bid for the Prior Stores because of valuations based on methods which are not internationally accepted. The

valuation methods used in this case applied a 75-year depreciation schedule for the economic life of the buildings. Without the assistance of outside experts to facilitate negotiations and the exchange of information, the SMOP may turn down an arrangement which could be highly beneficial to the Slovak Republic in its own right and a potential catalyst for other foreign investors to make much needed commitments in the Slovak Republic.

Similar bids received by the SMOP from foreign investors for shoe chains, furniture and other forestry product companies could also be helped by international advisors.

It is recommended that advisors be provided to assist the SMOP and the founder Ministries, as appropriate, in their negotiations with foreign investors. It is anticipated that an increasing number of these cases will arise as the privatization process continues. The earlier in the negotiating process these advisors are involved, the greater the value that can be achieved.

3.2 Review of Selected Privatization Projects

Each founder Ministry has a small number of highly sensitive privatization cases for which they need investment banking advice. Typically, these involve fairly large enterprises with high visibility and significant social and economic impact. Sometimes, there are competing proposals involving different restructuring of the enterprise, as well as different business strategies, management teams and investment strategies. The Ministries have a number of important questions on which it needs help. These relate principally to the soundness of the business plan(s), the viability of the enterprise, how best to restructure the enterprise, and how to weigh competing proposals.

For example, one sensitive case in the Ministry of Transport and Communications is Slovair, a large domestic airline with numerous ancillary services. The Ministry has received several privatization proposals based on different conceptions of how to divide the original

enterprise which it must assess. The Ministry believes the enterprise should be divided into several companies, which should each be privatized, but it is uncertain how many new companies should be created, and this involves an assessment of alternative business strategies. Once this has been decided, there is the question of how to divide the assets and liabilities of the enterprise among the different companies which are created.

Similar questions are raised by the Ministry of Forestry with respect to the pulp and paper sector, involving major companies such as SCP-Ruzomberok and Bukoza. There has been substantial foreign interest in this sector, but the Ministry feels a need to develop a sound business strategy for the sector prior to selecting between competing bids for all or part of these businesses.

In addition, the Ministries of Economy and Industry have indicated that they need international assistance in reviewing the business plans of major companies whose failure could have serious social and economic significance in the Slovak Republic. With the speed of the privatization process and the absence of specialized expertise, these Ministries have in many cases given approval to certain proposed privatization projects merely because the formalities have been complied with, even though there has been no review of the business plans to determine whether they are sound. Since the SMOP has indicated that it may approve such proposed projects on the same basis, there is a serious risk that important companies will be privatized on the basis of questionable business plans.

In order to rectify this potential problem, each of seven of the founder Ministries has already identified three to six companies which it feels have received approval for privatization without adequate review of the business plan. Appropriate assistance by international experts can be sought for these identified companies before the privatization process is complete.

It is recommended that advisors be provided to assist the SMOP and the founder Ministries to review privatization plans of enterprises they identify as being socially and economically

important, and potentially interesting to foreign investors. These advisors should be investment bankers, accountants, and management consultants.

3.3 Enterprise Specific Assistance

Apart from the needs of the founding Ministries and the SMOP in evaluating proposed privatization projects, there are some large enterprises which need help in preparing their privatization plans and business strategies in the first place. Often these enterprises could attract foreign investors, but do not know how to prepare the necessary information to present to a potential investor, or how to locate and approach potential investors. Each founder Ministry can identify a handful of enterprises which need such help because of their special importance to their sector and their potential to attract foreign investment.

For example, K-Mart is considering only six of Prior stores. The eleven Prior stores which are not included in the K-Mart group are considered no less attractive yet they received only one bid in their recent unsuccessful tender. This occurred for a variety of reasons, most of which grow out of lack of experience in the international tender market. To avert future failures, international experts could be helpful in designing and launching such tenders, preferably prior to an initial failure.

Advisors could be provided to work directly with enterprises on preparing a feasible privatization strategy responsive to market conditions and attractive to foreign investors. The founder Ministries may suggest certain enterprises as particularly appropriate beneficiaries of such assistance. Investment bankers, accountants and strategic planners will be needed to help such enterprises develop a strategic plan, prepare financial statements, arrive at a restructuring or reorganization, and produce an information memorandum for presentation to potential investors. Bankers with knowledge of how to organize a world-wide tender may be needed to help the enterprise identify, select and negotiate with a foreign partner.

3.4 Evaluate Competing Privatization Projects.

Most founder Ministries have several competing plans for the same enterprise, or for parts of the same enterprise which they typically do not know how to evaluate. In selected cases of significant importance, there is a need for investment banking expertise to help them assess competing plans, principally from a business point of view to see which are the most viable and most likely to lead to privatized companies which can succeed and make the best contribution to a competitive environment.

It is recommended that advisors be provided to assist the SMOP and the founder Ministries, as appropriate, to evaluate competing privatization plans of socially or economically significant enterprises.

3.5 Resolve Divergent Valuations

The founder Ministries or the SMOP are sometimes presented with privatization plans supported by widely different valuations of the companies concerned.

These circumstances create a difficult situation for the SMOP, which must approve an investment or a purchase for a specific value. A recent example of this arose in the Ministry of Industry with respect to a proposal from La Farge Coppee to purchase a cement plant. The SMOP was presented with two valuations reached using different methodologies and was uncertain how to proceed or how to defend any decision it made.

A similar situation of multiple, inconsistent valuations has arisen with the K-Mart acquisition of Prior stores and, as already discussed, seriously risks setting back the effort to secure foreign investment. International advisors are needed to review the different valuations to determine the reasons for the differences and to assess the varying methodologies. Based

on this review, international valuation techniques can be used to provide SMOP or the founder Ministry with a reasonable range of value to serve as a basis to approve or disapprove the privatization proposal.

It is recommended that advisors be provided to assist the SMOP and the founder Ministries, when requested, to resolve divergent valuations. Several examples were given above. There may be more uncovered in the First Wave of privatization, and it should be anticipated there will be some in the Second Wave.

3.6 Work Plan

The work plan for the completion of activities related to specific transactional assistance is based upon an assumption of the number of transactions and person days required to complete the work. The specific transactions for Phase I are contained in Appendix 4 to this document.

1. Help negotiate with foreign investors.

   It is estimated that an average of 15-30 person days of work are required per project. This would vary depending on the complexity of the project and the stage at which the advisors were brought in. If it is assumed a total of approximately 20 proposals involving foreign investors, the level of effort is estimated at 460 person days.

2. Review sensitive privatization cases.

   It is estimated that 10 person days are required per case. This would vary with the complexity of the plan and the size of the enterprise. In the First Wave, the founder Ministries have identified 25 projects resulting in a total level of effort of 250 person days.

3. Provide enterprise specific assistance.

   Direct assistance provided to enterprises could vary from 40 to 200 person days per enterprise, depending on the circumstances. A quick review of an

enterprise and help with selected aspects of their strategic or organizational problems could be done in 40 days. A full scale project of helping an enterprise prepare a strategy and information memorandum, organizing a global tender and selecting and negotiating with a foreign partner could take up to 200 person days.

There are numerous enterprises in Slovakia which could benefit from this sort of help. Some of the largest are receiving such assistance now. It is anticipated that another 20 to 30 which could use such help. The total level of effort estimate is 2,500 person days. The assistance should be arranged on an ad hoc basis, and more precise estimates can be given when specific details are presented.

4. Evaluate competing privatization projects.

It is estimated that 4 person days are required per case. This would vary depending on the complexity of the process and the size of the enterprise and number of competitive projects. It is assumed that 50 such cases, or a total of 200 person days of work.

5. Resolve divergent valuations.

It is estimated that 2.5 person days are required per case. It is anticipated that some 10 cases in both Waves of privatization will require assistance, or 25 person days of work. The work would occur sporadically during the First and Second Waves of privatization.

SECTION 4 ENABLING ENVIRONMENT

4.1 Establishing an "Enabling Environment"

The objective of privatization is not merely to accomplish a change in the ownership of enterprises but to help create a more efficient economy that can achieve the growth and cost effective production of goods and services the previous system failed to realize. Privatization or the change of ownership is only a means to accomplish this objective.

A large privatized enterprise that fails because of labor laws or practice, export or import restrictions, bureaucratic delays, corruption or arbitrary regulation will not deliver the full benefits of privatization. Similarly, if a state-owned enterprise employs four times as many people as are required to produce its products and continues by law, practice or contractual undertaking to maintain an excessive work force after privatization, the anticipated benefits of privatization will not be forthcoming.

It is important, therefore, that attention be paid not only to the workings of the Privatization Law itself but also to the whole fabric of the laws, regulations, and practices that affect the success of a privatized enterprise. Harmonizing the laws, regulations, and practices to make them supportive of the privatization effort will create the "enabling environment" which will allow private initiatives to thrive. Failure to create an "enabling environment" can completely undermine the success of the privatization program.

Thus, it is important to identify early impediments to efficient operation of businesses, apart from the change of ownership, so that these can be addressed as part of the privatization effort. The SMOP has no experience operating in a market economy and may consequently be overly hopeful that a mere change in ownership will achieve the objective.

Foreign advisors are needed to review the current status of the laws, regulations and practices and to assess whether they contribute toward the desired "enabling environment." Such a review would include interviews with lawyers, foreign investors already operating in the Slovak Republic or with proposals submitted for privatization, and others familiar with the environment. These interviews may pinpoint impediments which have been identified so that the advisor can make appropriate recommendations to the SMOP and other relevant Slovak Republic authorities. Implementation of the recommendations must become an integral part of a successful privatization effort.

4.2 Harmonizing Differing Approaches

There are serious differences between the founder Ministries and the SMOP regarding the approach to privatization to ensure that Slovak enterprises will be competitive both domestically and internationally. A state-owned monopoly which has its ownership changed so that it becomes a privately-owned monopoly is unlikely to deliver goods and services any more cheaply or in greater quantities than its predecessor.

The Slovak privatization program, as do others in the rest of Eastern Europe, presents a unique opportunity when compared with privatization programs in the U.K., France, Mexico or Chile. Unlike these other countries where large-scale privatization has been (or is being) undertaken, the Slovak Government is starting with virtually <u>all</u> enterprises in Government hands and as a consequence, has an unique opportunity to shape a truly competitive economy. The Ministries differ, however, on how best to do so.

For example, the Ministry of Trade disagrees with the SMOP's preference for speedy privatization of individual retail stores which may be weak competitors and not economically viable. The Ministry of Trade by contrast would favor instead grouping some of the individual retail stores into competing "chains" which could attract foreign joint venture partners. Foreign partners could in turn provide capital, management and training as well as economies of scale, all of which may be important for long term competitiveness and

efficiency. Nevertheless, both Ministries agree that the short deadlines should be maintained.

Sectoral studies would produce useful guidance to the Ministries in resolving such differences. For example, an analysis of the existing wholesale network for a specific industry in the Slovak Republic, and comparing it with networks in other market economies could suggest sectors where such "chains" should be encouraged. Such sectoral studies would allow the Slovak Republic to benefit from existing experience in other market economies rather than creating a false need to "re-invent" this experience. This could contribute significantly to a more successful privatization process.

The intent is to use advisors with international experience in market economies to resolve these differences and to suggest approaches likely to achieve a competitive, privatized economy. It is suggested that such advisors work with the founder Ministries and the SMOP to identify crucial policy differences involving competitiveness and make suggestions to resolve such differences drawing on experience in other market economies.

4.3 Foreign Investment Promotion

The Slovak Government Agency for Foreign Investment, in principle, has the responsibility to promote and attract foreign investment by engaging in a wide variety of promotional activities. These activities should include production of attractive and informative brochures about Slovakia and laws relating to foreign investment; establishing foreign offices to disseminate this information and establish relationships with potential investors; attending trade fairs, conferences, and seminars to educate potential investors about Slovakia; forming a one-stop investor office in Bratislava to assist potential investors identify opportunities, negotiate deals and make their way through the maze of laws and regulations; and working actively with potential and actual investors to help them make their investments successful. This Agency should also coordinate with Federal promotion offices as well as with individual departments within the Ministries.

It is important to the success of the privatization program as well as to the foreign investment promotion efforts that the two have some degree of coordination. Potential foreign investors will look initially at existing enterprises, and they should be assisted in this by the foreign investment promotion office. This means that the investment promotion office must be intimately familiar with the privatization process, and with which companies are available and receptive to foreign investors. It must also know what the priorities, preferences and views of the sectoral Ministries and SMOP are so as to combine interests where appropriate. The investment promotion office should follow up all contacts with foreign investors to develop additional opportunities outside the privatization process.

A task of this project should be to help create appropriate links between the privatization process and the foreign investment promotion process. To the best of our knowledge, these links do not at present exist. It is recommended that advisors work with the investment promotion agency to assist in identifying potential transactions, and work on them effectively.

It is clear that the linkages between the SMOP and the foreign investment promotion office as well as the interest shown by foreign investors will suggest areas where training courses might be developed by the Slovak Government to cross-train employees who lose their jobs as a result of privatization. Early attention to this potentially explosive issue may prove essential to the success of the privatization program.

It is recommended that advisors be provided to work with the Slovak Government Agency for Foreign Investment, the SMOP and the founding Ministries to help to harmonize their activities, including calling attention to opportunities which offer new employment potential. In addition, sectorial studies and regional analysis focused on identifying sectors where the Slovak Republic has intrinsic competitive advantages would also be helpful in identifying sectors with new and long-term employment potential.

4.4 Work Plan

The work plan for these activities is presented in the context of work that is recommended for completion in Phase I and work that can be deferred until Phase II.

1. Assess Enabling Environment.

   It is estimated that no more than 120 person days are required to conduct an in depth review of the legislative, regulatory, administrative (such as standards for valuation) and other environmental issues affecting the efficient operation of privatized companies. This review should be undertaken as soon as possible in Phase II, because it is absolutely crucial to ensure that privatization is more than simply changing the ownership of inefficient enterprises.

2. Harmonizing Differing Approaches.

   It is estimated that 60 person days would be required for a review of policy differences related to competitiveness. The first step should be to examine the issues that have already surfaced between the Ministry of Trade and the SMOP. It can be expected as the process matures, that other differences may appear which could also benefit from such objective consideration. These differences should be handled on an ad hoc basis. CzechoSlovakia has almost universal consensus in favor of Privatization, but voices are beginning to be heard in some of the founder Ministries that the quality of privatization needs more attention. It would be helpful, therefore, to deal with policy issues which bear on competitiveness as they arise to ensure a successful overall privatization process without slowing down the process.

3. Foreign Investment Promotion.

   This task could be accomplished within 60 person days. Twenty person days should be spent in Phase I to provide immediate assistance in evaluating and implementing promotional activities to encourage foreign investment in the remainder of the First Wave and to prepare for the Second Wave. The additional 40 days would be devoted to review how the promotional activities are progressing, and to suggest and assist in the implementation of modifications.

APPENDICES

APPENDIX 1 LIST OF PERSONS INTERVIEWED

PERSONS INTERVIEWED

Ministry of Privatization
- Ing Jozef RIZMAN, Vice Minister
- Vladimir HALAMA, Director International Relations

Ministry of Economy
- JUDr. Stefan LINDER, Director Department of Privatization
- Viera BALAGOVA, Chief Department of European Cooperation

Ministry of Trade and Tourism
- Ing Anna JOSTIAKOVA, Vice Minister
- Ing. Miroslav ADAMIS, Director Department of Privatization

Ministry of Forest and Water Management
- Ing. Mikulas MICHELCIK, Vice Minister
- Ing. NOSKAY, Director Department of Privatization
- Dr. Roman SVITOK, Director Forest Development Strategy
- Alexander NAGY, Director Strategic Department

Ministry of Construction
- JUDr. Irena ZALESAKOVA, Director Department of Privatization
- Ing. Jan HOFFMANN, Chief of Section
- Ing. SUMICHRAST, Chief of Section

Ministry of Agriculture
- JUDr. KUCHARIK, Director Department of Privatization

Ministry of Transport and Communication
- Ing. Mikulas DZURINDA, Vice Minister

Ministry of Industry
- Ing. Marius HRICOVSKY, Advisor to the Minister

APPENDIX 2 TRANSLATED PRIVATIZATION LAW

ACT
ON THE CONDITIONS OF TRANSFER OF STATE PROPERTY TO OTHER PERSONS

With commentary by František Faldyna LL.D.

CZECHOSLOVAK CHAMBER
OF COMMERCE AND INDUSTRY

relations and as a matter of fact to the abolition of all monopolistic socialistic ownership which had originated after February 1948 in Czechoslovakia, when practically all property had been ineffectively nationalized or collectivizated and in this way all private ownership had been basically liquidated.

The sence of the privatization being under implementation is to restore a strong sector of private enterpreneurial subjects and to dynamize through its intermediary the development of national economy with the participation both of domestic and foreign capital. The state ownership dominating so far must become individualized, it has to be transferred from the sphere of public law into the range of private law or in other words it has to be transformed into private ownership, into the ownership of concrete entrepreneurial subjects of private law. Only these subjects are able to valorize the proprietary values at maximum as the effort of these subjects shall ensue from their immanent ownership and economic interest.

The process of denationalization and privatization in the Czechoslovak, after-socialistic economy is of demanding character both in terms of matter and time, the privatization cannot be performed simply and at once. It must be effected progressively, within certain stages, but as quickly as possible. The entire economic development of the CSFR and its integration into the community of ecnomicaly developed countries in Europe and in the world shall be dependent on that development.

The first larger step made in the process of denationalization and privatization has been effected by the Act No. 427/1990 Coll., on the transfer of the state ownership to some goods to other juristic or natural persons (so called "Small Privatization Act") by which the privatization of business units in the sphere of services, commerce and production different from agricultural production is being performed.

The further transformation Act is the Act of February 26, 1991 on the conditions of tranfer of state property to other persons, currently called "Large Privatization Act". This Act specifies the procedure for the transfer of the state property into the ownership of domestic or foreign juristic and natural persons, as well as the conditions of this

transfer of state property to mentioned subjects for the purpos · of entrepreneurial activity.

It is beyond any doubt that juristic persons (others than the state or state organizations), as well natural persons who become owners of the privatized state property shall have a better relation to their property in terms of quality and that they shall undertake their business in their own interest, as well as in the interest of the entire economic development of Czechoslovakia. Unlike "small privatization" it can be also anticipated that foreign investors shall participate in "the large privatization" in a considerable extent.

The Federal Assembly of the Czech and Slovak Federative Republic has passed the following Act :

II.
PROVISIONS OF THE ACT AND COMMENTS TO THEM

PART ONE
Subject Matter and Extent of the Specification
Art. 1

(1) This Act specifies the conditions of the transfer of state property, to which the state enterprises, state banking institutes, state insurance companies and other state organizations (hereinafter referred to as "enterprise" only) have their rights of management, further the conditions of the transfer of their proprietary participations in the entrepreneurial activities of other juristic persons, as well as the conditions of the transfer of state proprietary participations in these entrepreneurial activities, to Czechoslovak or foreign juristic or natural persons (hereinafter referred to as "privatization" only).

(2) This Act shall be applied analogously for the property of foreign trade companies and specialized organizations of foreign

trade and also for their proprietary participations in the entrepreneurial acitivities of other juristic persons.

(3) The conditions of the transfer of state property specified by this Act shall not be applied to the property which can be only the ownership of state in accordance to constitution law or special Acts.

Commentary :

The subject matter of the so called "large privatization" is not deemed the entire state property. It is defined according to the Act in terms of the subject and object of this subject matter.

The property can be privatized having been so far in state ownership, if it is subject of the so called "right of management of state organization", particularly of state enterprises and other state organizations of entrepreneurial type the management of which is based on principle of profit (incl. state banking institutes and state insurance companies). The object of the privatization can be both property values being managed by the particular enterprise and also property participations of such enterprise in the entrepreneurial acitivity of other juristic persons (shares, proprietary parts etc.). The property participations in the entrepreneurial acitivity can be owned of course by state itself but even these proprietary values are subject of privatization. The Act puts also the organizations of foreign trade established according to the legal definitons of the economic relations with foreign countries, to the level of the enterprises in the terms of state organizations.

That state property cannot be privatized which is in exclusive ownership of the state in accordance with the existing constitutional and lower legal rules (accorging to Art. 10 of the Constituion of the CSFR this refers particularly to minerals, basic energetic resources and some other objects, mainly the property serving to the requirements of the entire public).

The Act does not apply mainly to the so called "national property" being in ownership of the state which are the goods, proprietary rights of the state and proprietary rights of state organizations (Art. 64, Par. 1 of the Economic Code).

The privatized property can be transferred not only to Czechoslovak but also to foreign juristic or natural persons.

Art. 2

The property of the enterprise for the purposes of this Act shall be deemed the complex of goods and financial means to which the enterprise has the right of management and which are its ownership, as well as the complex of rights, other proprietary values and obligations of the enterprise.

Commentary :

Property for the purposes of this Act is defined in the way that it involves goods (material objects), financial (monetary) means but also rights (particularly e. g. claims) and other proprietary values and obligations of the enterprise (e. g. both immaterial goods and also debts of the enterprise).

Art. 3

(1) The subject matter of this Act shall not be the property which has to be returned to juristic persons by special rules of law[1]. The subject matter of this Act shall be neither the property which has been transferred to the state after February 25, 1948 from the ownership of churches, holy orders and congregations and religious companies.

(2) The property, to delivery of which a claim may originate in favour of a natural person in accordance with specific rules of law[2] can be used according to this Act only in case that these claims had not been applied in the specified term or they have been rejected

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1) For example the Act No. 298/1990 Coll., on the modification of some proprietary relations of holy orders and congregations and of the archbishopric of Olomouc

2) For example the Act No. 403/1990 Coll., on the relieving consequences of some proprietary injuries, in the wording of the Act No. 456/1990 Coll.

Commentary :

The provision of Art. 3 solves the relation of the Act to the so called "Restitution Acts".

The "Large Privatization Act" does not apply, before all, to the limited sphere of property which has to belong to the churches and religious companies which were deprived of the same by force and without compensation. Therefore such property cannot be privatized which shall be returned according to the Act No. 298/1990 Coll., on the modification of some proprietary relations of holy orders and congregations and of the archbishopric of Olomouc, which Act is explicitly referred by the "Large Privatization Act". In addition, as subject matter of this Act is not deemed the property having been transferred to the state from the ownership of churches, holy orders and congregations and religious companies after February 25, 1948; the restitutuion of this property shall be solved by a separate Act.

The present Act neither applies to the property being subject matter of the so called "small restitution" according to the Act No. 403/1990 Coll., on relieving some consequences of proprietary injuries, in the wording of the Act No. 456/1990 Coll. unless the legitimate natural person made valid his claim in time or his claim was not rejected).

Art. 4

The property can neither be transferred according to this Act, if it has been proposed and classified for the transfer of ownership to other juristic or natural persons according to special rules of law[3)], unless it has been decided that according to these rules of law the property shall not be classified for inclusion in the list of business units designed for transfer or that it has been excluded from this list[4)].

Commentary :

The special rule of law to which Art. 4 refers is the Act No. 427/1990 Coll., on the transfers of the state ownership of some goods to other juristic or natural persons, in the wording of the Act No. 541/1990 Coll - the "Small Privatizations Act" which precedes the large privatization in terms of the matter and time, i. e.

under conditions specified in that Act. In this respect it is referred to the respective Acts of the CNC (Czech National Council) No. 500/1990 Coll. and of the SNC (Slovak National Council) No. 474/1990 Coll., on the competence of the authorities of the Czech Republic or Slovak Republic resp. in the matters of transfer of state ownership of some goods to other juristic or natural persons.

PART TWO
Privatization projects
Art. 5

The transfer of the property according to this Act shall be exercised in conformity with the approved privatization project of the enterprise or in conformity with the approved privatization project of the state property participation in entrepreneurial activity.

Commentary :

The Act distinguishes between two kinds of privatization projects which shall be elaborated in respect to the privatization ineach individual case. The difference lies in the ownership charakter of the performed transfer from the state ownership into the ownership of juristic or natural, Czechoslovak or foreign persons.

Art. 6
Privatization Project of the Enterprise

(1) The privatization project of the enterprise shall be deemed a complex of economic, technical and proprietary data, data expressed in terms of time and other data and it shall include

a) the name of the enterprise and the definition of the property assigned to privatization according to this project (hereinafter referred to as "privatized property" only),

b) data on how the state had acquired the privatized property,

c) definiton of property being unusable for entrepreneurial purposes (e.g. uncollectible claims, unusable production essentials and inventories),

d) evaluation of the privatized property,

e) the way of transfer of the privatized property incl. the settlement of the claims of legitimate persons,

f) the difinition of the legal form of a commercial company in case of its foundation,

g) in case of the foundation of a joint-stock company the way of the distribution of the shares, the amounts of shares and/or the kinds of shares, as well as the data on whether and in what extent the investment coupons shall be used,

h) in case of the sale of the enterprise its form, determination of its price and conditions of payment,

i) in cases under Art. 11, Par. 3 the determination of the shares of the privatized property in accordance with Art. 11, Par. 4,

j) the way of transfer of industrial and intellectual property negotiated with the Federal Office for Inventions, as far as these right are property of the enterprise,

k) time schedule of the implementation of the privatization project of the enterprise.

(2) The privatization project of the enterprise can include along with the requirements specified in Par. 1 hereof

a) recommendation regarding the subject matter or the entrepreneurial activity,

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3) The Act No. 427/1990 Coll., on the transfers of the state ownership of some goods to other juristic or natural persons, in the wording of the Act No. 541/1990 Coll.

4) The Act of the CNC (Czech National Council) No. 500/1990 Coll., on the competence of the authorities of the Czech Republic in the matters of transfer of state ownership of some goods to other juristic or natural persons.

b) information regarding the persons showing interests in purchase of the enterprise or in the participation in the foundation of a commercial company with the use of the property of the enterprise or purchase of the shares of a newly established company,

c) data on the present and anticipated position of the enterprise in the market,

d) information on the number of staff and structure of its qualification.

(3) The privatization project of the enterprise can affect a part of the enterprise or the entire enterprise or the property of more enterprises.

Commentary :

In the provisions of Art. 6 of the Act the privatization project of the enterprise and its contents are defined and it is to be elaborated, if an enterprise or its part has to be privatized. The enterprise in accordance with Art. 1 is understood, before all, the state enterprise.

In Par. 1 of the cited provision the obligatory requirements of the privatization project of the enterprise are specified. Every privatization project of the enterprise must comply with these requirements.

In Par. 2 the facultative requirements are enumerated which must not be involved in the privatization project of the enterprise, nevertheless they shall be mostly involved as they shall be usefull for the privatization and they shall be highly significant from the point of view of the future entrepreneurial activities.

As a rule any enterprise shall be privatized as a whole, however, only its part can be privatized (plant, business premises etc.) or the property of more enterprises can be privatized at the same time. This shall be dependent on the particular circumstances of each privatization project of the enterprise.

Art. 7

(1) The founder and/or the establishing subject (hereinafter referred to as "founder" only), to whom the proposals of the privatization project of the enterprise shall be submitted, shall be

responsible for the elaboration of the proposal of the privatization project of the enterprise.

(2) The proposal of the privatization project of the enterprise as a rule shall be elaborated by the entreprise which is concerned by the privatization. If the proposal of the privatization project of the enterprise is elaborated by the founder or by a person different from enterprise, the founder shall require the standpoint of the enterprise to the proposal.

(3) The founder can impose upon the entreprise the elaboration of the proposal of the privatization project of the enterprise and can set down an adequate term for it.

(4) The enterprise shall inform the competent labour union organ about the proposal of the privatization project of the enterprise.

Commentary :

The responsibility for the elaboration of the proposal of the privatization project of the enterprises lies with the founder to whom the proposal must be submitted. (The founder of the enterprise is the competent central or regional authority of state administration).

As a rule, the enterprise shall elaborate the proposal itself, even though it is possible that the proposal of privatization project is elaborated by the founder of the enterprise or by another person (to an order); in such an instant the founder is jobliged to require the standpoint of the particular enterprise to the proposal.

In the interest of the safeguarding of the privatization an instrument is enshrined in the Act for the founder of the enterprise which enables him to impose the elaboration of the privatization project within an adequate term. It shall depend on concrete circumstances (on the size and complexity of the enterprise, on the extent of the prepared privatization and the like) which term, is to be held for adequate.

The cooperation with labour union organization is effected in that the enterprise informs the competent labour union organ about the proposal of the privatization project (however the approval of this organ in not required).

Art. 8

(1) The founder shall evaluate all submitted privatization projects of the enterprise and shall submit them with its own standpoint, without unnecessary delay, to the approval of

a) Federal Ministry of Finance, if the founder is a federal central authority of state administration,

b) competent authority of state administration of the Republic in all other cases.

(2) The founder shall submit also the privatization projects of the enterprise under Par. 1 hereof which has not been recommended by the founder for implementation, with its reasoning of its standpoint.

Commentary :

The founder is not an approving body, his task is to evaluate the submitted privatization projects of the enterprise (from the wording of the Art. 8 it ensues that more proposals of privatization projects can be elaborated regarding the given enterprise) and afterwards to submit them together with its standpoint to the FMF or to the competent authority of the state administration of the Republic.

Art. 9

Privatization Project of the State Property Participation in Entrepreneurial Activity

(1) The federal central authority of state administration performing the rights of state regarding the property participations in the entrepreneurial activity of the juristic persons shall be responsible for the elaboration of the privatization projects of these participations during the term set down by the Government of the Czech and Slovak Federative Republic and shall submit the same to the Federal Ministry of Finance.

(2) The authority of state administration of the Republic or the municipality performing the rights of state regarding the proprietary participations in the entrepreneurial activity of the juristic persons

shall be responsible for the elaboration of the privatization projects of these participations during the term set down by the Government of the Czech Republik or the Government of the Slovak Republic (hereinafter referred to as "Governments of the Republics" only) and shall submit the same to the competent authority of state administration of the Republic.

(3) The privatization project of the state proprietary participations in entrepreneurial activity (hereinafter referred to as "privatization project of participation" only) shall include adequately the requirements of the privatization project of the enterprise.

(4) The proposal of the privatization project of participation shall be principally elaborated by the juristic person who is concerned. The proceeding under Art. 7 and 8 shall be applied adequately.

Commentary :

Except of the privatization projects of the enterprises the subject matter of which shall be the privatization of the enterprises (of their entire or partial property) the further type of privatization shall be the privatization of the state property participation. To this purpose the privatization project of the state property participation in the enterpreneurial acitivity shall be elaborated. That privatization consists in that the state participations in the already existing commercial companies, mostly joint-stock companies, shall be transferred into the ownership of private persons. In these joint-stock companies the holder of the shares pertaining so far to the state shall be the competent authority of the state administration. The privatization shall be effected by sale of the shares.

The activity and competence of the authorities being responsible for the elaboration of this kind of privatization projects and approving the same is specified in the Act similarly as in the case of the privatization projects of the enterprises; an adequate validity of the provisions given for the privatization projects of the enterprises is set down also for the requirements of the privatization projects of the participations of the subjects. The same applies for the competence and procedure required for the elaboration of the proposal of the privatization project of the participation.

Art. 10

Approval to Privatization Projects

(1) The privatization project of the enterprise and the privatization project of the participation shall be approved and published by

a) the Federal Ministry of Finance, if this is the founder of the enterprise or if the rights of the state regarding the property participations of the juristic persons are performed by the federal central authority of the state administration,

b) the competent authority of the state administration of the Republic in all other cases.

(2) The Government of the Czech and Slovak Federal Republic or the Governments of the Republics can reserve the right of approval of the privatization project of the enterprise and the privatization project of participations.

(3) The privatization project shall require the approval under Par. 2 hereof, whenever it is the case of direct sale except of public competition or public auction.

Commentary :

The privatization projects shall be approved in accordance with the principle of federative organization of the state either by the Federal Ministry of Finance on the federal level or by competent authority of the state administration of the Republic on the level of Czech or Slovak Republic (by competent Ministry for Privatization).

The Federal Government or Governments of the Republics are entitled to reserve the right of approval to the corresponding privatization project. The approval of the competent Government is necessary in the instant when the privatization in accordance with the privatization project is effected by direct sale without public competition or public auction.

PART THREE
Transition of the Privatized Property to Funds and the Use of the Funds Property

Art. 11

(1) In conformity with the approved privatization project of the enterprise the founder shall wind up the enterprise without liquidation or it shall excerpt part of the property of the enterprise.

(2) In cases when the founder of the enterprise is the federal central authority of the state administration on the date of the transition, the privatized property shall transit to the Federal Fund of the National Property established by this Act according to Art. 29 (hereinafter referred to as "Fund" only) on the date of the winding up of enterprise or on the date of the excerption of part of its property. This shall not apply to the cases under Art. 42.

(3) If the founder of the enterprise is the authority of state administration of the Republic or a municipality, the privatized property shall transit to the Fund of the National Property of the Czech Republic or to the Fund of the National Property of the Slovak Republic (hereinafter referred to as "Funds of the Republics" only) on the date of the winding up of the enterprise or on the date of the excerption of part of its property; the Funds of the Republics shall be established by Acts of National Councils.

(4) To the competent Fund of the Republic the following items shall transit under Par. 3 hereof :

a) that part of privatized property being located on the territory of the appropriate Republic,

b) financial means and property in terms of rights and obligations according to the locations of that organizational component of the enterprise with the activity of which these rights and obligations are connected,

c) financial means and property in terms of rights and obligations being not connected with the activity of any of the organizational components according to the share ensueing from the value of the privatized property which

has transitted to the corresponding Fund of the Republic under Letter a) and b) hereof.

(5) Prior to the transition of the property according to Par. 2 and 3 the enterprise shall dispose of the parts of unuseable property (Art. 6, Par. 1, Letter c)) according to the approved privatization project.

(6) The founder shall not excerpt a part of the property of the enterprise being formed by the rights of industrial of other intellectual property or to which these rights are linked (Art. 6, Par. 1, Let. j). These rights shall be transformed by a contract.

(7) If the entire property of the enterprise transits to the Fund and/or the Funds of the Repbulics, the foundation of the commercial company or the sale of this property shall coincide with the winding-up of the enterprise without liquidation.

(8) On the date set down by the approved privatization project of the participations the federal central authority of the state administration shall transfer the rights concerning these participations to the Fund and the authorities of the state administration of the Republics and communities shall do the same to the corresponding Fund of the Republic.

Commentary :

The privatization process is composed of two stages and acts: the first one is the de-nationalization consisting in the transition of the property of the privatized enterprise to the competent Fund, the second one is the privatization itself consisting in the transition of the property from the Found to the subjects of private law, i. e. to juristic or natural persons.

In addition the individual privatization methods differ in other respects, e.g. in the sale of the enterprise in contradiction to the "coupons method" and in the status and the function of the founder and of the founds ensueing from that distinction.

The first step is represented by the winding up of the enterprise without liquidation or by exception of part of the privatized property of the enterprise which is effected by the founder in harmony with the approved privatization project of the enterprise.

The property of the wound-up enterprise or the excepted property being privatized transits to the relevant Fund (Federal or of the Rebuplics) established by this Act or by the Acts of the National Councils.

In case of the sale of the property of the wound-up enterprise the winding up of the enterprise shall be effected by the decision of the founder and by the transit of this property to the Fund in the moment when the Fund as the selling party concludes the purchasing contract with the purchaser. There exists therefore an immediate link-up in terms of time.

The Act respects three types of state ownership, i.e. the ownership of the Federation, ownership of the Czech Republic and of the Slovak Republic. Therefore, in terms of competence, the Act had to divide the transition of the privatized property to the Funds of the Republics in relation to the (Federation) Fund.

It has to be stressed particularly that also the rights of industrial and other intellectual property (rights ensueing from inventions, improvement suggestions, industrial designs, know how but also trade marks and certificates of origin, copyrights etc.) form the part of the privatized property. The founder cannot dispose of the rights linked with the enterprise. These rights are transferred by a contract between the seller and purchaser. The founder particularly cannot except these rights similarly as a part of the property of the enterprise assigned to privatization; such a part is transferred by a contract and in this way the rights are protected.

The temporal coincidence (immediate linkage in terms of time) is the condition required expressively by the Act for the case when the entire property of the enterprise being wound-up without liquidation transits to the Fund for the purpose of the sale of this property or for its investment in a commercial company being under establishment.

In case of the privatization project of a state property participation the transfer of the corresponding rights is effected by competent state administration authorities of the Federation or the Rebuplics, or of the municipality to the respective Fund.

Art. 12

(1) The property of the Fund and the Funds of the Republics (hereinafter referred to as "Funds" only) shall not form a part of the

state budgets and it can be used for the purposes specified by this Act.

(2) The property of the Funds can be used in conformity with the approved privatization projects for the following ways of privatization :

a) to the foundation of a joint-stock or other commercial company[5)] and to the disposal of the property participations in these companies,

b) to the sale of the property of the enterprise or its part,

c) to the transfer of the privatized property to municipalities,

d) to the transfer of the privatized property for the purposes of pension and health insurance.

(3) For the use of the property under Par. 2 hereof the approval according to special rules of law[6)] shall not be required

4) The claims of the persons legitimate according to special rules[2)] may be covered from the property of the Funds.

5) The property of the Funds may be used for the fulfilment of the obligations of the enterprises earmarked for privatization :

Commentary :

The Act precisely specifies the rules for the disposal of the property acquired by the respective Fund during the privatization process

Before all, it has to be noted that in harmony with the de nationalization principle the property of the Fund is separated from the state budgets (of the Federation and the Republics). The state property is transferred into the property of Funds which are juristic persons separated from the state. The state has no right to interfere in the property of the Funds

On the other hand also the Funds may dispose of the transferred property only for the purposes enumeratively specified in the Act (No further purposes, principally not even the entrepreneurial purposes are allowed)

The property of the Funds may be used only for purposes being in connection with the privatization, or for the purposes explicitely stated in the Act

On the first place the Act specifies in the Art. 12, Par. 2 four kinds of privatization in conformity with the approved privatization projects

For the use of the property for privatization purpose no approval according to special legal rules is required, mainly e.g. in accordance with the Act No

173/1988 Coll., on enterprise with the foreign property participation, in the wording of the Act No. 112/1990 (for the investment of the privatized property share into such enterprise).

There are two exceptions from the above mentioned pnovatization purposes stated by the Act. From the property of the Funds the claims of persons legitimate according to the "Restitution Acts" can be covered (e.g. according to the Act. No. 403/1990 Coll., on the relieving consequences of some proprietary injuries, in the wording of the Act No. 456/1990 Coll.). In addition, the property of the Funds can be used for the fulfilment of the obligations of the enterprises being earmarked for privatization; but even this case is related to the privatization.

Art. 13

For the sale of the property of the Funds no preferential treatment can be given. For the sale of shares only preferential treatment can be given which is admitted by the Act on joing-stock companies.

Commentary :

During implementation of the privatization the principle must be respected that all persons showing interest and acquirers have equal position so that no one should be subject of preferential or disadvantageous treatment.

An exception is only the preference treatment ensueing already from the existing rules of law regarding certain groups of share holders in the present time, as this is made possible by the Act No. 104/1990 Coll., on joint-stock companies.

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5) The Act No. 104/1990 Coll., on joint-stock companies

The Act. No. 109/1990 Coll., Economic Code, in the wording of subsequent rules of law

6) The Act. No. 173/1988 Coll., on enterprise with the foreign property participation, in the wording of the Act No. 112/1990

Art. 14

(1) The Funds shall accomplish the sale of privatized property on the basis of a contract concluded with a buyer or in a public auction. If the sale is accomplished in public auction, an adequate proceeding shall be used as for the transfer of the state property according to special rules of law[3].

(2) In case of investment of privatized property in the basic capital of the commercial company the Funds shall proceed in compliance with special rules of law[5].

Commentary :

In cases of privatization implemeted by the sale of the privatized property, the Funds (Federal Fund, Funds of the Republics) shall perform such sale either on the base of purchase contract where the Fund is the sellilng party and the respective person (juristic or natural person) is the purchasing party, or in the form of a public auction.

If the sale takes place in a public auction, it shall be proceeded iln compliance with adequate use of special rules of law being applicable for this purpose and which are referred to by the "Large Privatization Act". This is the question of the Act No. 427/1990 Coll., on the transfers of the state property of some goods to other juristic or natural persons, in the wording of Act No. 541/1990 (Small Privatization Act).

If the way of privatization is used which is based on the investment of the privatized property in the basic capital of the commercial company, the Funds shall proceed in compliance with special rules of law regarding the establishment of commercial companies or regarding the property paricipation in these companies (in the present time the Act No. 104/1990 Coll., on joint-stock companies and the Act No. 109/1964 Coll., Economic Code, in the wording of subsequent rules of law). As a rule, it shall be a joint-stock company or private company limited by shares where the respective Fund shall be the only founder or the only partner. (It shall be either an investment into the capital stock of a joint-stock company or an investment into the basic capital of a private company limited by shares).

Art. 15

(1) By the sale of the privatized property or by its investment in the basic capital of a commercial company the ownership of the goods as well as other rights and obligations linked with the privatized property shall transit to the acquirer on the date on which the contract has come into effect.

(2) In all other respects the transition of the financial claims shall be governed by the legal adjustment of the cession of claim in accordance with special rules of law[7].

(3) For the transition of the obligation an approval of the creditor shall not be required, however, the Fund shall quarantee by its property the fulfilment of the obligation of the acquirer of the privatized property.

(4) The acquirer shall notify the creditors of the acquisition of the obligation without unnecessary delay.

Commentary :

The legal consequence of the sale of privatized property or of investment of this property into commercial company is the transit of the ownership to the goods (material objects) to the acquirer. Similarly also other rights and liabilities transit together with the privatized property (proprietary rights, rights of labour-law relations etc.).

Regarding the transition (cession) of a claim the Act refers to the existing special rules of law which are - for given consequences - the corresponding provisions of the Act No. 40/1964 Coll., Civil Code, Act No. 109/1964 Coll., Economic Code, in the wording of subsequent rules of law and Act No. 101/1963 Coll., on legal relations in international trade (Code of International Trade).

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2) see page 5, 3) see page 7, 5) see page 17

7) The Act No 40/1964 Coll., Civil Code
The Act No 109/1964, Coll., Economic Code, in the wording of subsequent rules of law.
The Act No 101/1963, Coll., on legal relations in international trade (Code of International Trade)

Special provisions are included in Art. 15 of the Act regarding the transition of obligation (debt). To such transition no approval of the creditor (which approval uses to be obligatory in other cases) is required, however, this is replaced by a legal guaranty, because the Fund guarantees by its property the fulfilment of the obligation by the acquirer of the privatized property. In addition the acquirer has the notifying duty which he has to fulfill without unnecessary delay.

Art. 16

The rights of industrial and other intellectual property shall be transferred on the basis of a contract concluded between the acquirer and the enterprise.

Commentary :

These rights including the rights to inventions, iprovement suggestions and industrial designs, copyrights, rights to immaterial goods, as are the trade marks or certificates of origin, are of absolute character and are linked with the enterprise.

Their transfer, particularly for the reason of their protection in inland and in abroad, is effected only on the basis of a contract between the existing enterprise and the acquirer, while this contract is concluded simultaneously with the winding-up of the enterprise and with the signature of the purchase contract or with the effected property investment.

Art. 17

The rights and obligations of the enterprise ensueing from labour law relations to the employees of the enterprise or its organizational component, which are concerned by the privatization, shall transit to the acquirer.

Commentary :

The transition of the rights and obligations ensueing from labour law relations is subject of special provision, as the Labour Law Code does not apply to these cases. The provision of Art. 17 secures indispensable continuity and

legal security of the employees in that the mentioned rights and obligations are transferred to the acquirer without being changed in respect or their contents and extent.

Art. 18

If all the property of the enterprise is being privatized und unless otherwise ensues from the contract or from the legal operation by which the property of the enterprise is being invested into the basic capital of a commercial company, the right of use of commercial name of the enterprise shall transit to the acquirer, unless this is in contradiction with the Act specifying the use of commercial name. This transit shall not be prevented by a change of the complement of the commercial name specifying the legal form of the enterprise.

Commentary :

As far as all the property of the wound up enterprise is beging privatized, the transition of the so called "commercial name" (firm's name) is also taken into consideration; it represents a special right to immaterial goods, nevertheless with cosiderable proprietary consequences. (mainly if a well known firm has an outstanding image and a large clientage due to this fact). This provision is therefore set on the basis that also the authorization to use the commercial name (firm's of the existing enterprise is being transferred to the acquirer, unless this is in contradiction with the Act specifying the use of commercial name, mainly if consumers' deception may occure. (The revision of provisions regarding commercial name or firm's name shall be included in the newly drafted Commercial Law Code).

The commercial name (firm's name) does not transit to the acquirer of the entire privatized property in case, when this does not ensue from the contract or from the legal operation by which the property of the enterprise is invested into a commercial company (which means t t the mentioned contract or legal operation can specify this matter differently).

The transfer of the commercial name (firm's name) shall not be prevented by a change of the complement of the commercial name specifying the legal

form of the enterprise (e.g. the change of the indication from "s.p." (state enterprise) to "a.s." (joint-stock company).

Art. 19

(1) The Fund shall transfer and the acquirer shall take over the goods included into the privatized property on the date on which the contract has come into effect. A minutes of it shall be made and signed by both parties.

(2) With the transfer of the property the acquirer shall assume the responsibility for damage of these goods as well as he shall acquire ownership of them.

(3) For the acquistition of ownership of immovable assets a registration according to special rules of law shall be required[8]).

Commentary :

The material transfer and acceptance of the goods included into the privatized property is effected by a minutes signed by the Fund and acquirer.

This moment is very important in terms of the moment of the transition of the liabilities for damage, as well as of the ownership of the transferred goods. The transition of the liabilities for damage is understood in that the acquirer has any right to require the compensation of the damage from the Fund, when the damage is specified as a loss, extinction or deterioration of the goods concerned without taking into consideration the reasons of the damage, unless the damage has been caused by the Fund.

The ownership of immovable assets transits only as a consequence of the registration which is required for the validity of the respective legal operation. The registration is effected by the public notary office according to the Act No. 95/1963 Coll., on state notaries and proceeding before the state notaries, in the wording of subsequent rules of law.

Art. 20

(1) In the minutes of the transfer (Art. 19, Par. 1) the missing and defective goods shall be quoted. Unless otherwise settled in the contract, the missing goods shall be deemed those things not having

been transferred to the acquirer, even though they have to be part of the transferred property according to the book-keeping. When estimating the defectivenes of the goods it shall be taken into account how they are able to serve for the operation of the enterprise and how long they have been in use according to the book-keeping.

(2) Unless otherwise settled in the contract, the acquirer shall apply for adequate price rebate of the missing or defective goods included into the minutes of the tranfer.

(3) The acquirer may apply his claim for price rebate regarding the obligations which have been transferred upon him and have not been entered into book-keeping.

Commentary :

In the minutes of the transfer of goods included in the privatized property it is necessary to quote the missing and defective goods, while this is processed in according to the book-keeping or on the basis of the estimation of the ability of defective goods to serve during the future operation of the enterprise. The acquirer has the right for adequate indemnification for the missing and defective goods, unless otherwise settled by the parties in the contract.

The acquirer has the right for rebate also regarding those obligations incl. debts which have been transferred upon him and have not been entered into book-keeping. For their application the respective forfeiture terms according to the Civil Law Code, Economic Code and International Commerce Law Code are applicable.

Art. 21

During the transfer of the goods and the preparation of the minutes of the transfer the Fund shall be represented by persons authorized on the date of the winding-up of the enterprise or the exception of a part of the property of the enterprise or act on behalf of the enterprise. During this acitivity these persons shall be responsible to the Fund.

Commentary :

For practical reasons the Act states that during the transfer of the goods and the preparation of the minutes the statutary organs or representatives of the enterprise being wound-up, or of the enterprise from which a privatized part of property is being excepted are acting on behalf of the Fund, and are, of course, responsible for their activity to the Fund on behalf of which they are acting.

PART FOUR
Investment Coupons

Art. 22

(1) The investment coupon (hereinafter referred to as "coupon" only) for the purposes of this Act shall be deemed to be security (consolidated paper) in name giving the right to purchase shares specified for sale against coupons. The coupon shall be untransferrable and the rights atached to the same can be transferred only to heirs.

(2) The coupon cannot be amortized.

Commentary :

The separate fourth part of the Act concerns the coupon method of "large privatization".

The process of large privatization is confronted by an acute lack of inland capital, while it can be presumed that the foreign capital shall not cover and even shall not be able to cover all privatization plans.

The Act therefore ensues from the fact that the privatization process shall be accelerated and widened by the mediation of investment coupons. A number of state enterprises shall be transferred to joint-stock companies and the shares of these companies shall be sold to citizens for the issued investment coupons.

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8) The Act No 95/1963, Coll., on state notary and proceeding at the state notary office, in the wording of subsequent rules of law

For the purpose of this Act the coupon is defined as security registered in name which is intransferrable to other person and the rights linked with this coupon are transferred only to heirs. The coupon can be used only for the purpose stated by the Act, e.i. for the purchase of privatized property.

The coupon cannot be declared invalid in case of its loss, misappropriation or exctinction.

Art. 23

(1) The text of the coupon shall contain at least the following :
a) name and birth statistical number of the citizen,
b) name of the authority having issued the coupon,
c) the acquiring price,
d) time of validity,
e) date of issuance.

(2) The coupons issuer shall be the Federal Ministry of Finance.

(3) The net revenue of the sale of coupons shall be transferred to the Fund of the Republik competent according to the location of the durable residence of the acquirers of the coupons on the date of the acquisition of these coupons.

Commentary :

The Act defines the obligatory requirements for the text of coupons in Art. 23, Par. 1, while not excluding, of course, that the coupons should fulfill otehr requirements.

The Federal Ministry of Finance is the exclusive coupons issuer so that no one else hat the right to issue the coupons.This provision is based primarily on the organizational, technical and finance-controll reasons and it does not influence eirther the extent of the privatized property being transferred to the individual Funds or the distribution of the revenues of the privatization.

Net revenue of the sale of coupons shall be transferred to the Fund of Czech Republic or Slovak Republic competent according to the location of the durable residence of the acquirers of coupons on the date of the acquisition of these coupons.

Art. 24

Any Czechoslovak citizen having his durable residence in the territory of the Czech and Slovak Federative Republic and who have completed 18 years of age on the date of the issuance of the coupons shall have claim for these coupons.

Commentary :

The right for coupons originating from the Act is attributed to every Czechoslovak citizen who completed 18 years of age and complies with the condition of durable residence in the Czech and Slovak Federative Republic.

Art. 25

(1) The coupons of a corresponding emission can be used for
a) purchase of shares of any joint-stock company included for this purpose into the list of privatization projects, as far as the citizen makes valid his claim within the term specified in this list,
b) acquisition of the participation in commercial companies founded specially for this purpose, after the previous aproval of the competent authority of the Republic.

(2) The ways specified in Par. 1 hereof can be used paralelly

Commentary :

In Art. 25 two ways of the use of coupons are enshrined which can be used in particular cases paralelly.

In the first place it means the purchase of shares of a joint-stock company which has been included for this purpose into the list of privatization projects, while the citizen must enforce his claim for the purchase of the shares within the term specified in this list.

The coupons can be used also for the acquisition of the property participation in commercial companies (e.g. private companies limited by shares, limited partnerships, limited partnerships by shares) established specially for this purpose, after the previous approval of the competent authority of the Czech or Slovak Republic.

h) lease these values for a definite time until they are used for privatization.

(2) The Fund shall employ experts whose remuneration shall be approved by the presidium.

Commentary :

The Fund has its legal subjectivity and capability to conclude contracts on its own and to do legal operations pertaining to its competence according to the Act on the basis of approved privatization projects.

Before all, the Fund participates in the foundation and entrepreneurial activities of joint-stock companies and other commercial companies in a stated manner. It concludes also contracts on the sale of property of wound-up enterprises (the Act refers here inaccurately to "sale of enterprises") or on the sale of the excepted property from the enterprises and it is also authorized - in the interest of effective utilization of the acquired property - to lease proprietary values for a transitory period till they are used for the purpose of privatization.

The specification of the above mentioned legal operations is to be understood as an example only and the Fund can do other legal operations than those under Art. 28, Par. 1.

Art. 29

During the accomplishment of the acitivities specified under Art. 28 hereof the Fund shall acquire rights and assume obligations. The Fund shall be authorized to sue for the fulfilment of its rights or demand the fulfilment of its rights with other competent authorities and it can be sued for being in default of its obligations or other duties for the fulfilment of which he shall be liable by its entire property.

Commentary :

The property-law status of the Fund is given by that it is a subject of full rights. Being a juristic person it is liable for its obligations by its entire property and on the other hand it has the right to sue for the fulfilment of its rights with a court or other competent authorities.

Art. 30

The highest organ of the Fund shall be the presidium consisting of 9 members. The chairman, vice-chairman and the members of the presidium shall be elected by the Federal Assembly to the proposal of the Government of the Czech and Slovak Federative Republic for the period of 5 years. Members of the Czech and Slovak Federative Republic, of the Government of the Czech Republic and the Government of the Slovak Republic, members of the Federal Assembly, members of the Czech National Council and of the Slovak National Council cannot be members of the presidium.

Commentary :

The concept has been passed that the presidium being the highest organ of the Fund is elected by the Federal Assembly to the proposal of the Government of the ČSFR.

Simultaneously the incompatibility of the functions of members of the presidium with the functions of members of the Governments or members of the legislative bodies has been enshrined.

Art. 31

(1) The presidium shall have the power to

a) nominate and manage the executive board and to supervise its activity,

b) approve the statute of the Fund,

c) approve the remuneration of the members of the executive board,

d) elaborate the draft of the budget of the Fund and submit the same for the discussion of the Government of the Czech and Slovak Federal Republic,

e) approve the rules of procedure of the presidium and of the executive board,

f) discuss the annual balance statement of the Fund and submit the same to the discussion of the Goverment of the Czech and Slovak Federative Republic,

g) discuss the annual report on the activity of the Fund by April 30 for the preceeding year.

(2) After the draft of budget and annual balance statement has been discussed by the Government of the Czech and Slovak Federative Republic, the Fund shall submit the same to the Federal Assembly for its approval.

Commentary :

The most important managing activities within the framework of the Fund belong to the competence of the presidium, while the important checking functions had to be entrusted with to the Government of ČSFR and to the Federal Assembly, namely regarding the budget and annual account statement.

Art. 32

(1) The presidium shall be capable of transacting business if its meeting is attended by the majority of its members incl. its chairman and vice-chairman. For the decision making the approval of the majority of the present members shall be required. In case of equity of votes the vote of the chairman shall be decisive.

(2) The chairman and in his absence the vice-chairman shall sign the documents on behalf of the presidium.

Commentary :

The proceedings and decision makings of the presidium ibased on are customary democratic principles.

The presiding of the meeting of the presidium is either the chairman or in his absence the vice-chairman. In case of equity of votes the vote of the chairman or the vice-chairman is decisive.

Art. 33

(1) The activity of the Fund shall be governed by the executive board of the Fund (hereinafter referred to as "board" only) in accordance with the instructions of the presidium.

(2) The board shall act on behalf of the Fund within the extent specified by the statute. The statute shall specify which written legal operations shall require the signatures of two membres of the board In addition, the statute will specify when and in what extent the members of the board shall act on behalf of the Fund and appoint a proxy to act on behalf of the Fund The members of the board being authorized to act on behalf of the Fund shall be entered into the Register of Companies.

Commentary :

The executive board is an operatively managing organ of the Fund The extent of the authorities of the board and the rights of its members to act on behalf of the Fund is stated by the Statute.

Art. 34

(1) The board shall consist of nine members nominated by the presidium for the period of five years Prior to the termination of this term the presidium can recall any member of the board, if he violates his duties or is unable to perform his function

(2) The members of the board shall elect from among themvelves a chairman and two vice-chairman at maximum

(3) The members of the board shall be employees of the Fund

Commertary :

The board and its members are responsible for their activity to the presidium The members of the board which is the executive organ of the Fund have a labour relation to the Fund. They can be recalled from their function on the base of stated reasons.

Art. 35

(1) The supervisory board of the Fund (hereinafter referred to as "supervisory board" only) shall supervise the activity and management of the Fund, of its presidium and board With respect to the character of the matter the presidium shall notify the

Government of the Czech and Slovak Federative Republic, Federal Asembly and/or other competent authorities of the identified discrepancies.

(2) The presidium shall discuss the draft of the budget and the annual balance statement in the supervisory board prior to their submitting to the Government of the Czech and Slovak Federative Republic.

Commentary :

As it ensues from its denomination and competence the function of the supervisory board of the Fund is a supervisory one. The duty of this board is particularly to discuss the draft of the budget and the annual balance statement prior to their submitting to the Federal Government.

The other competent bodies which may be notified by the supervisory board of the identified discrepancies with the respect to the character of the given matter, are the Federal Ministry of Control, the Federal Ministry of Finance, the Office of the Prosecutor etc.

Art. 36

(1) The supervisory board shall consist of five members elected by the Federal Assembly for the period of five years. The Federal Assembly can recall the member of the supervisory board even prior to the termination of the period of his function. The members of the supervisory board shall be elected and recalled by secret ballot.

(2) The members of the supervisory board cannot be the employees of the Fund.

Commentary :

The importance of the supervisory function of the board is stressed by the activity of the Federal Assembly in the relation to the supervisory board. The members of the supervisory board are elected and recalled by the Federal Assembly.

The independence and impartiality of the members of the supervisory board is secured by the provision that they cannot be employees of the Fund.

Art. 37

(1) The members of the supervisory board shall elect from among themselves a chairman and a vice chairman.

(2) The provisions of Art. 32 shall . applied analogously.

Commentary :

Regarding the quorum and decision making of the supervisory board the provisions of Art. 32 are applied analogously, i.e. the presence of simple majority of its members incl. its chairman or vice-chairman and the affirmative votes of simple majority of the present members are required with the provision that in case of equity of votes the vote of the presiding person is decisive. The documents of the supervisory board shall be signed on its behalf by the chairman or in his absence by the vice-chairman.

Art. 38

The function of the member of presidium, board and supervisory board shall be incompatible.

Commentary :

The incompability of the functions of the members of all three top organs is given for the security of impartiality, independence and proper perfomance of the Fund's function.

Art. 39

The members of the presidium, board, supervisory board and the employees of the Fund cannot perform activities which are in contradiction with the interests of the Fund, particularly they must not be members of the organs of joint-stock companies in the entrepreneurial activity of which the Fund has proprietory participation. The members of the presidium, board and supervisory board cannot acquire the property of the Fund except of the shares against coupons.

Commentary :

The provision of Art. 39 secures that the members of the organs and employees of the Funds do not come into conflict with public and their own private, proprietary interests. The Act protects these interests against potential collision by the above mentioned prohibition of activity and personal and proprietary participation, besides the mentioned exception.

Art. 40

The Fund shall cover the costs in connection with its activity from its property within its budget approved by the Federal Assembly.

Commentary :

As a matter of principle, the Fund covers the costs in connection with its activity from its property. It is not a organization financed from a state budget. Some of its functions are of entrepreneurial character; the activity ensueing from these function brings progit.

PART SIX
Special, Transitory and Final Provisions

Art. 41

(1) For the purpose of privatization effected also by means of coupons the Government of the Czech and Slovak Federative Republic and the Governments of the Republics shall specify the principles within three months from the date when this Act has come into effect; on the basis of said principles the competent central authorities of the state administration and the municipalities shall submit for the approval of the competent Government the lists of enterprises and lists of state proprietary participations in entrepreneurial activities of other juristic persons which shall be included into privatization.

(2) The lists of enterprises submitted to the approval shall include particularly the name and the seat of the enterprise and of

the founder, evaluation of the property and the number of the employees of the enterprise. The lists of the state proprietary participations in the entrepreneurial activities of other juristic persons submitted for approval shall include particularly the name and the legal form of the juristic person, the subject matter of the entrepreneurial activity and the extent of the state proprietary participation in this entrepreneurial activity.

(3) The Government of the Czech and Slovak Federative Republic and the Governments of the Rebuplics shall set down the terms for elaboration of privatization projects.

Commentary :

The task of all three Governments based on the Act is to specify principles for implementation of the privatization by using all means of privatization incl. the coupons method. On the base of these principles the competent central authorities of state administration (mostly the branch ministries) and municipalities shall submit to the competent Government (of the ČSFR or appropriate Republic) for their approval lists of enterprises and lists of state property participations which shall be included into provatization.

Lists of enterprises and lists of state property participations submitted for approval must include stated requirements to enable the competent Governments duly to evaluate the same.

To secure due temporal procedure of large privatization the Governments of the ČSFR and the Republics are empowered to state terms for subsequent elaboration of privatization projects.

Art. 42

(1) The propriety of the enterprises of foreign trade, specialized organizations of foreign trade, state banking institutes, with the exception of the State Bank of Czechoslovakia and the state saving institutes founded until the date on which this Act has come into effect shall be transferred according to the privatization project of the enterprise into the Fund of the National Property of that Republic where the privatized enterprise has its seat and where its

investment has been entered in the capital stock of the joing-stock companies established by this Fund.

(2) If the property of the privatized enterprise transits into the Fund of the National Property of the Czech Republic, this Fund shall transfer one third of the shares after the foundation of the joint-stock company into the Fund of the National Property of the Slovak Republic. If the property of the privatized enterprise transits into the Fund of the National Property of the Slovak Republic, this Fund shall transfer two thirds of the shares after the foundation of the joint-stock company into the Fund of the National Property of the Czech Republic.

(3) As far as the enterprises specified in the Par. 1 hereof had been transferred into joint-stock companies before the date when this Act has come into effect or had been founded as joint-stock companies, the state participations in their entrepreneurial activities shall transit by two thirds into the Fund of the National Property of the Czech Republic on the date of the approval of the privatization project and by one third into the Fund of the National Property of the Slovak Republic.

Commentary :

The provisions of Art. 42 solve the division of the privatized property between the Czech and Slovak Republics in terms of competence in cases of already quoted organizations of foreign trade and state banking institutes (apart from stated exceptions). This refers to a speicific sphere of foreign trade and banking operations.

The shares in the privatized property shall be distributed between the Fund of the National Property of the Czech Republic and the Fund of the National Property of the Slovak Republic in the rate 2 to 1.

Art. 43

The provisions of this Act concerning the federal central authorities of the state administration shall be applied analogously also for the State Bank of Czechoslovakia.

Commentary :

The Act places the State Bank of Czechoslovakia on the level of federal central authorities of state administration. This bank is not only central emmission bank with entrepreneurial aspects but it also proves the features of a federal central authority of state administration.

Art. 44

The evaluation of the property of the enterprise included inthe approved privatization project shall replace the evaluation of the non-monatery investment in the capital stock of the joint-stock company made by an authorized expert and required according to special rules of law[9].

Commentary :

The obligatory component of an approved privatization project is evaluation of the property of privatized enterprise. For practical reasons the Act states that in such a case the evaluation of non-monetary investment in the capital stock of a joint-stock company required by the existing Act No. 104/1990 Coll., on joint stock companies is simultaneously replaced by the above mentioned evaluation.

Art. 45

(1) Except of the customary management[10] the enterprises cannot conclude contracts on the transfer of ownership to which they have the right of management, and cannot dispose of their proprietary participations in the entrepreneurial activities of juristic persons nor establish the same.

(2) Exception from the provision of Par. 1 hereof can be approved by the competent Government in justified cases. The approved exception shall replace the approval according to special rules of law[6].

(3) The state proprietary participations in the entrepreneurial activity of juristic persons can be disposed of only in accordance with the approved privatization project of the participation.

(4) The provisions of Par. 1 and 2 hereof shall not be applicable to juristic persons specified in Art. 1, Par. 2 hereof and to organizations financed or substituted from state budget.

Commentary :

The provision of Art. 45, Par. 1 and 2 replaces in principle the existing legal measure No. 364/1990 Coll., on the disposal of property entrusted to the care of state enterprise.

The sence of this revision is to prevent the escape of the property which has to be privatized according to this Act.

What has to be understood as transfer of property standing apart from customary management is specified by the Economic Code (Act No. 109/1964 Coll., in the wording of subsequent rules of law - compare particularly with Art. 68 of the Code).

From this legal arrangement the organizations of foreign trade referred to in Art. 1, Par. 2 hereof and the organizations financed or substituted from state budget are excluded.

Art. 46

(1) Legal relations of the Funds of the Republics, their activity and kinds of use of their property shall be specified by Acts of National Councils which shall also specify in which cases the property of the Funds of the Republics can be used for other purposes than for the privatization.

(2) The Government of the Czech and Slovak Federative Republic in the agreement with the Governments of the Republics shall specify, by an Ordinance the way of the coupons' issuance,

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9) The Act No 104/1990, Coll., on joint-stock companies.

10) The Act. No 109/1964, Coll., Economic Code, in the wording of subsequent rules of law.

various coupons' types, the purchase price of the coupons, the way of the specification of the extent of the claim for shares and the way of the use of the coupons.

Commentary :

The provision of Art. 46 includes indispensable powers both for passage of Acts of National Councils and for Decree of the Government of the ČSFR which shall be important procedural regulations for the performance of coupons method.

Art. 47

(1) In case that the ownership to the privatized property or to its part has been dispossessed in the way specified in Art. 2, Par. 3 of the Act No. 87/1991 Coll., on out-of-court rehabilitations, a legal claim shall originate in accordance with the mentioned Act in favour of the legitimate persons; the way of settlement of the claim shall be specified by the privatization project concerning that property.

(2) The legitimate person shall apply his claim with the authority competent according to Art. 10, Par. 1 hereof for the approval of the privatization project within 6 months from the date on which this Act has come into effect, orherwise the claim shall become extinct; at the same time the legitimate person shall notify this authority of the enterprise possessing the goods. The competent Fund of National Property shall settle the claim according to Par. 1 hereof in accordance with the time schedule of the implementation of the privatization project, however at the latest within one year from the date of the approval of the privatization project.

(3) In other respect, the provisions of the Act No. 87/1991 Coll on the out-of-court rehabilitations shall be applied adequately for

the specification of the extent, way of application and settlement of the claim under Par. 1 and 2 hereof.

Commentary :

In Art. 47 it was necessary to solve the relation of the "Large Privatization Act" to the Act on out-of-court rehabilitations.

According to Art. 2, Par. 3 of the Act No. 87/1991 Coll., on out-of-court rehabilitations the persons are entitled to rehabilitation whose property has been nationalized in accordance with the provisions on nationalization of the years 1945 to 1948 without compensation. The claims of these persons shall be settled within the privatization project.

The claim shall be applied with the Federal Ministry of Finance or with respective authority of state administration of National Property and Its Privatization) by October 1, 1991, while these authorities must be simultaneously notified which enterprise holds the goods.

For the settlement the respective provisions of the Act on out-of-court rehabilitations shall be applied.

Art. 48

The following rules of law are hereby repealed :

1. Art. 28 of the Act No. 111/1990 Coll., on state enterprise.
2. Legal Measure No. 364/1990 Coll., on the disposal of the property entrusted to the state enterprise.

Commentary :

The derogation clause abolishes, apart from the already quoted legal measure No. 364/1990 Coll. (which has been replaced by the provision of Art. 45 of this Act), also Art. 28 of the Act on state enterprise, enclosing transformatory provisions which are replaced by the "Large Privatization Act" by its own provisions.

Art. 49

This Act shall come into effect as of April 1, 1991.

Prague, March 8, 1991.

APPENDIX 3 OTHER RELEVANT LAWS

ACTS
ON ECONOMIC RELATIONS WITH FOREIGN COUNTRIES, ON THE ENTERPRISE WITH FOREIGN PROPERTY PARTICIPATION AND ON THE JOINT-STOCK COMPANIES

Remarks on the Amended Act on Economic Relations with Foreign Countries

One of the consequences of the essential changes in the political life of Czechoslovakia at the end of the year 1989 was also a completely new view of the legislative arrangement of the legal position and activity of Czechoslovak economic entities in their cooperation with Czechoslovak as well as foreign patners. This started the rather complicated period of search for legislative measures which, with the introduction of the market orientation of our country, would enable not only the demonopolization of the present economic structures and stimulation of the economic activity of Czechoslovak producers and those who render all kinds of services, which, however, at the same time would not disturb the necessary economic stability. This aim is to be served by a number of adopted new or amended economic laws whether they specify the basis for the legal position of Czechoslovak economic entities or some specific fields of their activity. At the same time many other legal regulations are amended. This is a continuous process of legislative changes which requires not only a mutual interlinking, but in view of the great amount of problems which accumulated for several decades and were either not solved at all or only partly, it also requires patience and the proper progression.

The economic relations effective until recently with foreign countries (Act No 42/1980 Coll. in the version of the Act No. 102/1988 Coll. the complete wording of which was published under No. 184/1988 Coll.), although after the adopted changes in 1988 they gave greater scope to independent economic relations of Czechoslovak subjects with foreign countries, could not serve the aim of the transition from the directively planned Czechoslovak economy to a market economy. Although in April 1990 there were in Czechoslovakia more than 600 companies authorized to develop their economic relations with foreign countries independently, the Acts of that time included several prohibitive provisions the aim of which was to maintain the rigid monopoly of the state in this field

The present changes, on the other hand, although leaving the state with a certain authority over the economic relations with foreign countries, have mainly two aims:

a) to extend the scope for foreign economic activities to a greater number of entities (juristic as well as natural);

b) to help open the Czechoslovak economy to the rest of the world

What are the basic changes introduced by these laws that are to serve these aims?

(1) Economic relations with foreign countries continue to mean only the field of foreign trade activity and foreign economic services; a special regulation of production cooperation and specialization, scientific-technical cooperation and the treatment of the so-called industrial rights (this means the rights to inventions, industrial designs and trade-marks) in relation to foreign countries is completely abolished.

(2) Foreign economic activity can also be carried out by Czechoslovak natural persons (i.e. individuals) in principle under the same conditions and to the same extent as juristic persons.

(3) Newly introduced is the previous registration of Czechoslovak persons, carrying out economic activities with foreign countries, in the companies register at the respective court (previously this duty only concerned juristic persons); for a Czechoslovak individual (a natural person) this means that in the case of such activity it is not sufficient only to register with a trade office and that the registration in the companies register is indispensable regardless of the analogous duty established by the Act on Private Entrepreneurial Activities of Natural Persons when fulfilling certain criteria (taxes for earning of more than 540,000 Cz. crowns, Kés, and 25 and more employees).

(4) A Czechoslovak person gains the authorization to carry out economic activities with foreign countries by the registration of this activity with the Federal Ministry of Foreign Trade or another responsible body if it is the case of foreign economic services; the former authorization system has thus been replaced, in a decisive number of cases, by a system of registration which is less demanding as to administration and time.

(5) Introduced is the duty of the petitioner to register or receive another authorization for economic activities with foreign countries and prior to his petition to deposit in a bonded account with a Czechoslovak monetary institution (i.e. a bank or savings bank) an amount of money (i.e. security) of 20,000 Cz. crowns for Czechoslovak natural persons, 100,000 Cz. crowns for other persons (i.e. a Czechoslovak juristic or any foreign person).

(6) A uniform record has been introduced for any economic activity with foreign countries at the Federal Ministry of Foreign Trade regardless of the fact whether it itself registered or authorized the respective petition.

(7) The former authorization system for the establishing of representations of foreign persons in Czechoslovakia, as well as for the establishing of organizational bodies of Czechoslovak persons abroad is also replaced only by registration, the matters of which should be specified in the implementation rules.

(8) The possibilities of the sale of goods and the rendering of services on the territory of Czechoslovakia for foreign currency must be approved in the future also by the Czechoslovak State Bank (previously only by the Federal Ministry of

Foreign Trade and the Federal Ministry of Finance).

Besides several other changes (e.g. abolishing of the self-administration bodies in the foreign trade enterprises, individual membership in the Czechoslovak Chamber of Commerce and Industry etc.) the amendments also specify an important principle according to which the authorization issued according to the previous Act is automatically considered as authorization or registration according to the new amendment.

Czechoslovak organizations exporting and importing within the framework of the so-called production cooperation with, to put it simply, the CMEA countries according to Article 7 paragraph 2 letter b of the previous Act are given 3 months (from the date the amended Act becomes effective) to be registered or receive authorization for such an activity.

Let us now summarize the existing possibilities for economic activities with foreign countries:

- economic activities with foreign countries are, from the point of view of Czechoslovak persons, not only the sale of goods and the rendering of services to the benefit of foreign persons abroad, but also in Czechoslovakia;
- the subject of this activity can be a natural as well as a juristic person, Czechoslovak as well as foreign;
- for nationals to gain this authorization for this activity it suffices, in most cases, to register immediately, at the latest, however, within 15 days;
- with the exception of the establishing of a representation (trade representation) foreign persons need an authorization;
- any subject of economic activity with foreign countries must, prior to filing a petition for registration or the issuing of an authorization, deposit a security of the set amount. This amount has the same interest rate as any other long term deposit;
- the petition for registration or authorization must contain the specified requirements;
- a condition for the granting of registration or authorization for all Czechoslovak persons is the previous registration in the companies register. For individuals (natural persons) operating according to the Act on Private Entrepreneurial Activities of Natural Persons it is expedient to mention here that according to its provisions they can register with the companies register when they start operations, later, however, at the latest by February 15, of the respective calendar year,
- the authorization to carry out economic activities with foreign countries is for Czechoslovak persons also registerd in the companies register;
- repeated or serious violation of the obligations in the economic activity with foreign countries can be sanctioned by the cancelling of the registration, the withdrawal of the authorization or the forfeiting of the security;
- to ensure the stability of the Czechoslovak market and to protect the important interests of the country a licence system will be introduced for certain export and

import items (import and export licences) regardless of the existing registration or authorization. The list of products, semiproducts or raw materials which are subject to this licensing will be regularly and suitably published by the Federal Ministry of Foreign Trade as binding rules of law, while respecting the obligations arising from Czechoslovakia's membership in GATT, as well as from the Agreement on Import Licensing signed within its framework;
– regardless of the possiblities for Czechoslovak persons to carry out the export and import of goods on the basis of their registration or authorization it is presumed that certain strategic items (e.g. oil, some chemicals etc.) will continue to be centralized in the existing organizations of foreign trade.

In conclusion it should be mentioned that Czechoslovak persons with convertible currency bank accounts are entitled in Czechoslovakia according to the decree No. 169/1989 Coll. within the scope of their authorization to carry out economic activity with foreign countries to pay, in agreement with the foreign partner, for the price of imported goods or received services in local currency.

The amended Act on Economic Relations with Foreign Countries is effective as of May 1, 1990 and its complete text will be published in the Collection of Laws and Decrees.

The Act on Economic Relations with Foreign Countries

The Act of April 19, 1990 which modifies and amends the Act No. 42/1980 Coll. on Economic Relations with Foreign Countries, in the version of the Act No. 102/1988 Coll.

The Federal Assembly of the Czechoslovak Federative Republic has passed the following Act:

Part I
INTRODUCTORY PROVISIONS

Article 1

This Act determines
the organization, regulation and control of foreign economic activity, and defines its forms,
the establishment of trade representation offices of foreign persons on the territory of the Czechoslovak Federative Republic,
the establishment of organizational bodies of Czechoslovak persons in foreign countries,
the position of chambers of commerce and industry on the territory of the Czechoslovak Federative Republic and their tasks,
non-commercial exports and imports,
the protection of trade policy interests of the Czechoslovak Federative Republic, and defines the competence of central authorities in this sphere.

Article 2

In administering this Act the central government bodies shall cooperate so as to secure the implementation of the economic policy of the State and to protect the trade policy interests of the Czechoslovak Federative Republic in accordance with obligations resulting from international legal relations of the Czechoslovak Federative Republic.

Article 3

For the purposes of this Act

a) the term "Czechoslovak persons" means juristic persons having their seat and natural persons having their domicile on the territory of the Czechoslovak Federative Republic; the term "foreign persons" means other juristic or natural persons;

b) the term "service" means fulfilment of an obligation the subject of which is an economic activity carried out against payment; activity carried out on the basis of a labour relationship is not a service;

Part II
FOREIGN ECONOMIC ACTIVITY

Chapter 1
BASIC PROVISIONS

Article 4

Foreign economic activity under this Act has the following forms:

a) foreign trade activity (Article 6);

b) foreign economic services (Article 17);

Article 5

Foreign economic activities shall be managed, organized and controlled by the State within the limits of the Act in such a way that said entrepreneurial activities in this field develop in conditions of economic competitiveness, in accordance with the needs of the national economy of the Czechoslovak Federative Republic and in accordance with international treaties binding on the Czechoslovak Federative Republic and that the integration of Czechoslovak persons in the international division of labour grows in suitable forms.

Chapter 2
FOREIGN TRADE ACTIVITY

Section 1
DEFINITION OF FOREIGN TRADE ACTIVITY

Article 6

(1) Foreign trade activity includes with regard to Czechoslovak persons the following:

a) the export of objects from the Czechoslovak Federative Republic and the import of objects

into the Czechoslovak Federative Republic for the purpose of sale or other paid for transactions or for the use in production or in granting services, or for the performance of a profession, as well as the export from the Czechoslovak Federative Republic and the import into the Czechoslovak Federative Republic by their other economic activity (commercial export and import);

b) purchase of goods and its direct resale in foreign countries without import into the Czechoslovak Federative Republic;

c) granting of services to foreign persons on the territory of the Czechoslovak Federative Republic for Czechoslovak currency with the exception of direct satisfaction of personal needs of natural persons or similar needs of juristic persons;

d) granting of services in foreign countries;

e) acceptance of services from foreign persons with the exception of services accepted by Czechoslovak natural persons for the satisfaction of their personal needs;

f) mediatory activity for Czechoslovak persons in relation with foreign persons;

g) impartial control on the basis of an inspection contract for issuing certificates on goods delivered or services granted in international trade;[4)]

h) procurement of transport of objects (consignments) by any form of means of transport and connected activity, if the place of dispatch or the place of destination or both are outside the territory of the Czechoslovak Federative Republic;

i) operation of sea-shipping.

(2) Foreign trade activity includes with regard to foreign persons the following:

a) the export of objects from the Czechoslovak Federative Republic and the import of objects into the Czechoslovak Federative Republic for the purpose of sale or another paid for transactions, or for the use in production or in granting services or for the performance of a profession, as well as export from the Czechoslovak Federative Republic and the import into the Czechoslovak Federative Republic by their other economic activity (commercial export and import);

b) granting of services on the territory of the Czechoslovak Federative Republic;

c) sale of goods on the territory of the Czechoslovak Federative Republic, if it is not realized between foreign persons only;

d) impartial control on the basis of an inspection contract on the territory of the Czechoslovak Federative Republic for issuing inspection certificates

(3) Foreign trade activity includes also any activity mentioned in paragraph 1 carried out by.

a) Czechoslovak Film and Czechoslovak Television;

b) the Czechoslovak Press Agency with the exception of the procurement and supply of news material on the basis of contracts.[5]

(4) Foreign trade activity does not include:

a) import and export of values and trade with foreign exchange regulated by the provisions on foreign exchange control[6] with the exception of gold for industrial consumption or technological purposes;

b) activity realized by the Czechoslovak State Bank on the basis of special law[7] and by banking institutions and organizations entrusted by the Czechoslovak State Bank to fulfil some of the tasks reserved by law to the Bank;

c) granting and acceptance of legal assistance by persons authorized for this according to Czechoslovak generally binding rules of law[8];

d) activity of experts and interpreters realized under special law[9]

e) granting of, and acceptance of, services in the sectors as specified in hereof Article 17.

Section 2
REGISTRATION AND AUTHORIZATION OF FOREIGN TRADE ACTIVITY

Article 7

(1) Foreign trade activities may be carried out only by

a) Czechoslovak persons registered in the Companies Register – on the basis of registration, if this is not a case when according to this Act registration is not required and if it is not the case when, according to this Act an autorization is needed for this activity;

b) foreign persons – on the basis of a granted authorization if it is not the case where no authorization is required.

(2) The provision of paragraph 1 concerns also persons whom another legal regulation entitles to cary out foreign economic activity with that that this title can be limited only by law, or only in cases and under conditions determined by law.

(3) Authorization to carry out foreign trade activities is required in case of Czechoslovak persons if:

(a) the subject of import are objects other then those to be used in production by the person importing them, or other than meant for the performance of a profession by such a person, or the subject of export are objects other than from the own production of the person carrying out their export; objects of their own production are meant to be such products for which the technological process of elaboration means an essential change in quality and utility of the purchased raw materials, materials and semi-products and in whose calculation the value added exceeds the value of the actual production (direct wages, overheads, direct and

distribution costs and profit) by 30 per cent the value of the price of the thing;

(b) the subject of this activity is to negotiate the work activity of a Czechoslovak natural person abroad or a foreign natural person in the Czechoslovak Federative Republic;

(c) this concerns the export or import of objects or the carrying out of other activities, determined by the decree of the government of the Czechoslovak Federative Republic;

(d) a Czechoslovak person does not fulfil the conditions for registration given in Art. 7c.

(4) Registration or authorization for foreign trade activities is not required

(a) for foreign persons to sign contracts, which they sign on their own behalf with Czechoslovak persons entitled to carry out foreign trade activity and for the fulfilment of these contracts[9a];

(b) in other cases, if in the interest of the national economy of the Czechoslovak Federative Republic it is expedient to bind the carrying out of foreign trade activity neither to an authorization nor to registration and that under conditions and to the extent determined in the implementary provisions issued according to Art. 9.

Article 7a

Foreign trade activity of Czechoslovak persons is registered, the registration is withdrawn and the authorization for foreign trade activity is granted, changed and recalled by the Federal Ministry of Foreign Trade.

Article 7b

(1) Prior to applying for registration for foreign trade activity the applicant must deposit on a specially for this purpose opened bonded account with a bank or savings bank[9b] (further only "monetary institutions") an amount of money given in paragraph 4 (further only "security"). If it does not follow from the decision according to paragraph 2 otherwise, the applicant has the right to be returned the security within 15 days from the date that the decision on the nullification of the registration of his foreign trade activity or the decision on the refusal of registration become legally valid.

(2) If the applicant in carrying out foreign trade activity repeatedly or seriously violates the duties given for the carrying out of such activity in the generally valid legal provision or in the measures of the bodies of economic management or if the applicant, who is a Czechoslovak person, threatens during such activity repeatedly or seriously the good name of the Czechoslovak entrepreneurs or other Czechoslovak subjects carrying out economic activity in relation to foreign countries, the Federal Ministry of Foreign Trade in agreement with the Federal Ministry of Finance can decide that the applicant looses his right to the return of the security or its part. The financial means to the return of which the applicant

lost his right will be transferred by the Federal Ministry of Foreign Trade to the state budget. The Federal Ministry of Foreign Trade can, in connection with the conclusion of the foreign trade activity by the applicant at his request, decide that the security or its part will be returned to the applicant prior to the date of the conclusion of this activity and return the security or its part. In the event the security or part of it is lost, the applicant, if he continues to carry out foreign trade activity, shall complement it to its original amount.

(3) To the carrying out of foreign trade activity on the basis of an authorization applies the provision of paragraphs 1 and 2 analogously.

(4) The security is

a) 20,000 crowns for Czechoslovak natural persons

b) 100,000 crowns for other persons.

(5) The monetary amount deposited as security according to the provision of paragraph 1 has the same interest rate for the depositor as other long-term deposits placed with monetary institutions under the same conditions.

Article 7c

(1) The application for registration contains if it is for

a) a juristic person, his name, the seat, legal form, statutary bodies, identification number of the organization and the subject of activity, as well as a copy of the agreement with a Czechoslovak person, which so far carries out the foreign trade activity proposed for registration for the applicant, on the method of settling claims or other rights and obligations towards the foreign persons related to the property rights relations arising in carrying out this activity between the applicant and this Czechoslovak person, or a statement that this type of foreign trade activity has not been carried out for him;

(b) a natural person, his name and surname, the name under which he carries out the activity, identification number, domicile, identity card number and economic activity to which he is entitled on the basis of special regulations.

(2) The application also contains

a) the type and scope of the proposed foreign trade activity and in the export of objects also the marking of the nomenclature according to the customs tariff;

(b) marking of the decision on the issued permission according to special regulations to carry out economic activity on the territory of the Czechoslovak Federative Republic if the proposed foreign trade activity cannot be carried out without such permissions;

(c) statement from the Companies Register including the subject of activity.

(3) Data given in paragraph 1 and paragraph 2 letter b) must be substantiated by the applicant by the respective documents.

(4) A Czechoslovak person further submits information from the finance body on the active results of his economic activity according to his last accounting as well as a document on the deposit of the security.

(5) If the application for registration does not contain data according to paragraphs 1 and 2 or if it is not substantiated according to paragraph 3, and information according to paragraph 4, the Federal Ministry of Foreign Trade rejects the registration within 15 days from receiving the application.

(6) If during the registration or after the registration realities given in the application for registration change, the Czechoslovak person is obliged to inform the Federal Ministry of Foreign Trade about these changes within 15 days from the date he learned about those changes.

(7) The Federal Ministry of Foreign Trade can withdraw the registration if the Czechoslovak person repeatedly or seriously violates the obligations set for carrying out foreign trade activity by generally valid legal provision or measures of bodies of economic management[8] as well as in the case that he does not fulfill the obligations determined in paragraph 6. It goes that for the period of one year from the date that the decision on the withdrawal of the registration becomes legally valid according to the above sentence conditions for registration are not fulfilled for the Czechoslovak person it concerns. The Federal Ministry of Foreign Trade withdraws the registration at the request of the applicant if he concluded the operations of the registered foreign trade activity. The Federal Ministry of Foreign Trade can withdraw the registration if it finds that the registered activity has not been carried out by the Czechoslovak person for more than two years. The Federal Ministry of Foreign Trade informs the monetary institution of the Czechoslovak person about the nullification of the registration.

(8) To the procedure of registration, with the exception of its withdrawal and the procedure on the appeal against the decision on the refusal or withdrawal of registration, do not apply the general regulations on administrative procedure (Administrative Rules). Registration is not considered as a measure of the bodies of economic management[8]. A proper application for registration must be decided without delay, at the most within 15 days from delivery. The decision on registration contains an accurately defined type and scope of registered foreign trade activity, a statement that this activity has been registered, the alloted registration number, definition of the person for whom this activity was registered, information on the possibilities of appeal, date of registration, definition of the worker who carried out the registration and his signature; decision on registration which does not fully meet the application for registration, contains also the statement on the rejection of part of the application and the justification of the refusal to register. Similar matters are contained in the decision which fully rejects the application for registration. Against the refusal to register the Czechoslovak person can appeal to the Minister of Foreign Trade within 15 days from the date he received the refusal of registration. The decision on registration which fully meets the request for registration can be marked on the copy of the application for registration, which the applicant receives, statement of the registration, the allotted registration number, date of registra

tion and adding of the name of the worker who carried out the registration and his signature.

(9) The application for registration is submitted by the applicant to the Federal Ministry of Foreign Trade in two copies.

Article 8

(1) The Federal Ministry of Foreign Trade shall grant an authorization to carry out foreign trade activities to a Czechoslovak person, provided the latter shows that it meets the requirements guaranteeing a due, economically efficient and rational exercise of such activities and disposes of sufficient foreign currency funds to meet its liabilities arising out of a breach, if any, of its obligations towards foreign persons. The government of the Czechoslovak Federative Republic may fix for serious reasons additional conditions on the meeting of which it will make dependent the grant of authorization to engage in foreign trade activities. In addition, the Federal Ministry of Foreign Trade may grant an authorization to engage in foreign trade activities to foreign persons, if such grant appears to be in concordance with the goals of an expedient integration of the Czechoslovak Federative Republic's national economy into the international division of labour.

(2) The Federal Ministry of Foreign Trade shall restrict or withdraw the authorization to engage in foreign trade activities, if the Czechoslovak or foreign person, that have been authorized to engage in foreign trade activity commits a breach of its obligations set forth in the grant repeatedly, or in a serious manner. The Federal Ministry of Foreign Trade can withdraw or limit the authorization to carry out foreign trade activity from a Czechoslovak or foreign person, if conditions decisive for its granting have changed according to paragraph 1.

(3) Foreign trade activity, its change or withdrawal is written for Czechoslovak persons in the Companies Register.

Article 9

The Federal Ministry of Foreign Trade shall enact generally binding legal rules, governing the procedure to be followed when granting, modifying or withdrawing the authorization to engage in foreign trade activities, singling out such foreign trade activities, normally requiring registration or authorization hereunder, that can be carried out without registration or authorization, setting forth conditions and extent for such operations.

Section 3

REGULATION AND CONTROL OF FOREIGN TRADE ACTIVITIES

Article 10

Czechoslovak bodies and foreign persons carrying out their inspection activity

on the basis of a contract (Art 6, par. 1g and par. 2d) are obliged to carry out the inspection of goods and services in an impartial way and to issue an inspection certificate corresponding to the outcome of the inspection. Official measures, instructions or legal acts restricting the impartiality of such inspection are invalid.

Article 11

was abolished

Article 12

(1) The Federal Ministry of Foreign Trade shall control the exercise of the foreign trade activities by means of enacting hereunder generally binding legal rules, as well as through customs and, in cooperation with other central bodies of State administration, by means of other economic instruments within its powers.

(2) The Federal Ministry of Foreign Trade shall supervise the foreign trade activities under and within the scope of generally binding rules, enacted under Article 3 hereof.

(3) The Federal Ministry of Foreign Trade shall, in a generally binding legal rule, specify details concerning the authorized extent and content, operation and control of foreign trade activities carried out by Czechoslovak and foreign persons who engage in this activity on the basis of registration or granted authorization, or who can engage in this activity without registration or authorization (Art. 7 para 4).

Article 12a

(1) Czechoslovak as well as foreign persons shall not be free to establish Czechoslovak juristic persons, the basic subject-matter of business of which will include foreign trade activities and to modify same, unless an authorization is granted on to them by the Federal Ministry of Foreign Trade.

(2) Authorities of State administration shall not be free to establish a Czechoslovak juristic person under paragraph (1) hereof, or to modify the subject-matter of its business, unless a leave is granted to them by the Federal Ministry of Foreign Trade.

(3) An authorization under paragraph (1) or leave under paragraph (2) hereof shall replace registration or authorization under Article 7 paragraph (1).

Section 4

FOREIGN TRADE ENTERPRISES

Article 13

(1) A foreign trade enterprise is a juristic person established to engage in foreign trade activity, which stands for the breach of its commitments and other

obligations by its own assets.

(2) Foreign trade enterprises are not liable for commitments of the State, neither for commitments of other juristic persons, and the State and other juristic persons are not liable for commitments of foreign trade enterprises; this does not exclude liabilities originating in accordance with appropriate rules of law.

(3) Having heard the opinion of the respective national committee, the Federal Ministry of Foreign Trade shall have the right to establish foreign trade enterprises. Should the subject-matter of business of the newly established enterprise include activities other than foreign trade the Federal Ministry of Foreign Trade shall apply for approval to the competent authority of State administration, regarding that part of the subject-matter of business, provided special rules require such approval. The Charter of the foreign trade enterprise shall include, inter alia, its name, place of business, identification number, date of the establishment of the enterprise, subject-matter of business and its basic capital. The created enterprise shall be entered in the Companies Register. The enterprise shall have the capacity to acquire rights and to assume obligations as of the date of entry into the Companies Register. The proposal to register the enterprise in the Companies Register is submitted by the Federal Ministry of Foreign Trade which attaches to this proposal

a) foundation document,

b) the agreement of the responsible body of state administration on the subject-matter of enterprising, if a special regulation requires such an agreement.

(4) The Federal Ministry of Foreign Trade carries out towards the foreign trade enterprise the function of economic management under conditions and to the extent set forth by law and in this position supervises the economic and social activity of the enterprise.

Article 13a

(1) The state creates conditions for entrepreneurial activity of the foreign trade enterprise and regulates this activity mainly by legal regulations.

(2) The activity and territorial scope of the enterprise can be limited or interferred with under conditions and in a way as set by an Act.

Article 14

(1) A foreign trade enterprise shall be headed by a general director, who shall be the sole leader to control the activity of the enterprise, he is responsible for it and its results to the Federal Ministry of Foreign Trade; as a statutary body he acts on behalf of the enterprise. The general director is nominated and recalled by the Minister of Foreign Trade. The general director nominates and recalls his deputies who are statutary bodies of the foreign trade enterprise. The general director and his deputies register in the Companies Register as statutary bodies

of the foreign trade enterprise. The authorization to act on behalf of the foreign trade enterprise is gained by the general director and his deputies on the day of nomination. The effects of the ending of their function towards third persons start on the date of the registration of changes in the Companies Register.

(2) The internal organization of the foreign trade enterprise and the organization of the internal management are solely within the scope of the enterprise. The internal organization of the foreign trade enterprise is adjusted by the organization order, or another enterprise organization rule. In the designation of an internal organizational unit of the foreign trade enterprise the word "enterprise" or "organization" may not be used. The foreign trade enterprise can determine which internal organizational units will be registered in the Companies Register as branch officies. The head of the branch office is registered in the Companies Register and is entitled to carry out on behalf of the enterprise all legal acts concerning this branch office.

(3) The foreign trade enterprise must see to it that its property is fully, effectively and economically used and protected. The Federal Ministry of Foreign Trade will prepare in agreement with the Federal Ministry of Finance and the State Bank of Czechoslovakia by a generally binding rules details on the management of the property of foreign trade enterprises.

(4) The foreign trade enterprise keeps its books in the prescribed way, makes out an annual accounting and makes it available to the respective bodies of state administration. The auditing of the annual accounting of a foreign trade enterprise is carried out by an expert or a group of experts named by the Federal Ministry of Foreign Trade, or by an auditor. Costs connected with the auditing are covered by the enterprise.

(5) It is the duty of the foreign trade enterprise to cooperate in its economic and social activity with the respective national committees and share in the overall economic and social development of their territory in a way and under conditions set out by Law. It is also its duty to closely cooperate with the respective National Committee in the implementation of measures for the protection of the environment.

Article 15

(1) The Federal Ministry of Foreign Trade shall take decisions concerning liquidation, division, consolidation and amalgamation of foreign trade enterprise and modify in the subject-matter of their business; when doing so, the Ministry shall proceed in accordance with the provision of Article 13 paragraph (3), the first and second sentences hereof. A trade-union body gives its opinion on the measures of the previous sentence. In addition, the Federal Ministry of Foreign Trade shall have the power to modify the enterprise's name, and to change its seat and its basic capital. A divided enterprise ceases to exist and its property and obligations and rights are transferred to the extent as determined by the Federal

Ministry of Foreign Trade to the newly formed, or taking over foreign trade enterprises. A merged enterprise ceases to exist and its property, rights and obligations are transferred to the receiving foreign trade enterprise. After the fusing of enterprises the former foreign trade enterprises cease to exist and their property, rights and obligations are transferred to the newly formed foreign trade enterprise.

(2) The liquidation, division, consolidation or amalgamation of the foreign trade enterprise or the modification of its basic assets shall not adversely affect the creditors thereof. Such liquidation, division, consolidation, amalgamation or modification of its basic assets shall become effective as from the date of the respective entry into the Companies Register. The proposal for registration is submitted by the Federal Ministry of Foreign Trade.

(3) If no decision as to the transfer of a claim against the foreign trade enterprise being divided is taken, the creditor shall be free to assert his claim against any of the enterprise newly created by division, and these shall be liable jointly and severally.

(4) After the disestablishing of a foreign trade enterprise the Federal Ministry of Foreign Trade decides about the transfer of rights and obligations of the abolished foreign trade enterprise to another Czechoslovak juristic person or about the liquidation of the property. For the decision of the transfer of rights and obligations of the liquidated foreign trade enterprise to another Czechoslovak juristic person other than a foreign trade enterprise the prior consent of the receiving person must be obtained.

Article 15a

(1) The purpose of property liquidation (further only liquidation) of an enterprise is to settle the property matters of the abolished enterprise.

(2) The enterprise ceases to exist after the liquidation by the striking off the enterprise from the Companies Register.

Article 15b

(1) The enterprise proposes the recording of its liquidation and the liquidator, or liquidators (further only liquidator), who is appointed, in the Companies Register. During the stage of liquidation it uses its name with the appendix "under liquidation".

(2) On the date that the liquidator was registered in the Companies Register the bodies of the enterprise cease to exist. The liquidator is entitled to act on behalf of the enterprise in matters connected with the liquidation.

Article 15c

(1) On the date that the liquidation starts the enterprise prepares a balancing of its accounts and submits it to the liquidator and the respective bodies.

(2) Within thirty days after registration in the Companies Register the liquidator prepares a balance for the day of the commencement of liquidation and submits it to the Federal Ministry of Foreign Trade together with the liquidation plan, the budget of liquidation and inventory list about the extraordinary inventory of the economic means carried out on the date of the commencement of liquidation.

(3) During the course of liquidation the liquidator must mainly

a) deposit all monetary means with one Czechoslovak monetary institution,

b) conclude all current matters,

c) settle taxes and fees,

d) settle obligations and claims,

e) turn into cash the property of the enterprise in the most economic and most rapid way or use it otherwise according to the decision of the Federal Ministry of Foreign Trade,

f) submit to the Federal Ministry of Foreign Trade quarterly and annual reports on the course of the liquidation documented by the quarterly and annual balance.

Article 15d

(1) The liquidator prepares the accounting balance on the date of the conclusion of the liquidation and submits it to the Federal Ministry of Foreign Trade for approval together with the final report on the whole course of liquidation.

(2) After the screening and approval of the accounting budget by the Federal Ministry of Foreign Trade and after settling all tax duties, the liquidator

a) will dispose of the final balance of the liquidation according to the decision of the Federal Ministry of Foreign Trade,

b) sees to the safe depositing of any written material and accountings,

c) reports the conclusion of the liquidation to a court with the proposal for the enterprise to be struck off the Companies Register.

Article 15e

The liquidation of an enterprise with an overdraft takes place according to special regulations[59].

Section 5

FOREIGN TRADE ORGANIZATIONS FOR PARTICULAR PURPOSES

Article 16

(1) In order to secure the development and realization of foreign trade activity, especially to concentrate some technical activities, the Minister of

Foreign Trade of the Czechoslovak Federative Republic may establish and liquidate foreign trade organizations for particular purposes.

(2) For the establishment, transfer, amalgamation, division and liquidation and activity of foreign trade organizations for particular purposes, the general rules concerning State organizations shall be applied similarly.

Chapter 3
FOREIGN ECONOMIC SERVICES

Section 1
DEFINITION OF FOREIGN ECONOMIC SERVICES

Article 17

(1) The term "foreign economic services" shall include services rendered in the field of international carriage of goods more particularly railways, air, road, river and combined river and sea transports, with the exception of the procurement of transport of consignments, as well as in the field of communications, culture, education, insurance, and medical care, with the exception of spa cures, funeral, banking and financing services, provided all these are performed;

a) by Czechoslovak persons to foreign persons with the exception of services destined to meet personal needs of foreign natural persons and similar services rendered to foreign juristic persons, on the territory of the Czechoslovak Federative Republic paid in Czechoslovak currency, and to Czechoslovak persons abroad;

b) by foreign persons on the territory of the Czechoslovak Federative Republic;

(2) In addition, the foreign economic services shall include:

a) services rendered by Czechoslovak persons to Czechoslovak persons when mediating transfer of copyrights of Czechoslovak authors or performing artists to foreign countries, and of foreign authors or performing artists to the Czechoslovak Federative Republic[10];

b) the issuing of transport documents by Czechoslovak rail transporters of transport provided by foreign rail transporters, and by Czechoslovak air transporters for transport provided by foreign air transporters.

c) the sale of goods and granting of services on the territory of the Czechoslovak Federative Republic for foreign exchange (further only sale for foreign exchange).

(3) For the purposes of this Act "combined river and sea transport" means transport realized on sea and on river by the same boat.

Section 2
REGISTRATION AND AUTHORIZATION OF FOREIGN ECONOMIC SERVICES

Article 18

(1) Foreign economic services can be granted only by

a) Czechoslovak juristic persons founded for this purpose with authorization according to Art. 19 par 3;

b) other Czechoslovak persons on the basis of registration, if it is not a case where no registration is required and if they are not services given under Art. 17, par. 2, letter c), which may be rendered only on the basis and within the limits of the granted authorization;

c) foreign persons on the basis of an authorization if it is not the case where no authorization is required.

(2) Registration or authorization for granting foreign services are not required:

a) if foreign economic services are granted on the basis of law or an international treaty binding on the Czechoslovak Federative Republic;

b) in other cases where in view of the interests of the national economy of the Czechoslovak Federative Republic it is not appropriate to make the granting of foreign economic services dependent upon registration or authorization; the conditions and extent of this exception shall be specified in the implementory provisions under Article 22.

Article 19

(1) The granting of foreign economic services is registered, the registration is nullified and the authorization to grant foreign economic services is granted, changed or withdrawn in the sphere

a) of railway, air, river and combined river and sea transport by the Federal Ministry of Transport;

b) communications by the Federal Ministry of Communications;

c) road transport and funeral services by the Ministry of the Interior; or the Ministry of Interior and the Environment of the Republic; in the case of authorization in agreement with the Federal Ministry of Transport;

d) culture by the Ministry of Culture of the Republic;

e) education by the Ministry of Education, Youth and Physical Education of the Republic;

f) insurance by the Ministry of Finance, Prices and Wages of the Republic; in case of authorization in agreement with the Federal Ministry of Finance;

g) medical service by the Ministry of Health and Social Welfare of the Republic;

h) banking and finance by the State Bank of Czechoslovakia; in case of

authorization in agreement with the Federal Ministry of Finance;

i) sales for foreign currency by the Federal Ministry of Finance in agreement with the State Bank of Czechoslovakia and the Federal Ministry of Foreign Trade.

(2) If according to paragraph 1 the decision lies with a Ministry of the Republic this means that it shall be the Ministry of the Republic in which the Czechoslovak granter of services has his seat, or domicile or the foreign granter of services the seat of his organizational unit.

(3) A Czechoslovak juristic person, whose subject of enterprising includes foreign economic services, can be founded or its subject of enterprising changed only with the approval of the respective body similarly as according to paragraph 1.

(4) The body that has registered the granting of foreign trade services or nullified the registration, has given authorization for their granting or has changed or withdrawn such authorization, or has given, changed or nullified the authorization of the founding of a juristic person according to paragraph 3 must submit within 10 days notification about this to the Federal Ministry of Foreign Trade. The Federal Ministry of Foreign Trade keeps a central evidence of these registrations, authorizations and agreements on the basis of an allotted central filing number of the foreign economic services.

(5) For the granting, changes and withdrawal of authorization for granting foreign economic services applies analogously the provision of Art. 7b and Art. 8 par. 2 to 4. Provision Art. 7b and Art. 7c, par. 8 applies analogously also to the registration of these services. Provision Art. 8 par. 2 applies to the sale for foreign currencies, however, the authorization cannot be granted if it would be undesirable with regard to the Czechoslovak currency.

Section 3
REGULATION AND CONTROL OF FOREIGN ECONOMIC SERVICES

Article 20

Czechoslovak persons are allowed to grant foreign economic services connected with export of objects from the Czechoslovak Federative Republic or with import of objects into the Czechoslovak Federative Republic only under conditions and to the extent specified by the implementary provisions issued under Article 22.

Article 21

(1) Foreign economic services shall be controlled by those central authorities of State administration who registered this activity or granted the respective

authorization. Such control shall be carried out by enactment of generally binding rules of law and by economic instruments, applied in cooperation with the respective central authorities of State administration.

(2) The central authorities of State administration referred to in paragraph (1) hereof shall supervise the exercise of foreign economic services under, and to the extent of, generally binding legal regulations enacted under Article 22 hereof.

Article 22

In the field of

a) railway, air, river and combined river and sea transport: the Federal Ministry of Transport;

b) communications: the Federal Ministry of Communications;

c) road transport: the Federal Ministry of Transport in agreement with the Ministries of Interior, or the Ministries of Interior and the Environment of the Republics;

d) culture: the Ministries of Culture of the Republics;

e) education: the Ministries of Education, Youth and Physical Education of the Republics;

f) insurance: the Ministries of Finance, Prices and Wages of the Republics in agreement with the Federal Ministry of Finance;

g) medical care: the Ministries of Health and Social Welfare of the Republics;

h) banking and financing: the State Bank of Czechoslovakia in agreement with the Federal Ministry of Finance;

i) funeral services: the Ministries of Interior or the Ministries of Interior and the Environment of the Republics;

j) sale for foreign exchange: the Federal Ministry of Finance in agreement with the State Bank of Czechoslovakia

shall specify by enactment of generally binding legal regulations, in agreement with the Federal Ministry of Foreign Trade:

(1) requirements of the application for registration of foreign economic services, cases, when their registration can be refused or nullified and what services, under what conditions and to what extent, can be provided without registration;

(2) details of the procedure in granting, changing and refusing authorization for providing foreign economic services and which services, under what conditions and to what extent, can be provided without this authorization;

(3) the procedure of Czechoslovak persons in providing foreign economic services, and the organizing and supervision of this activity; in the case of sale for foreign exchange there can be, besides the conditions for the implementation of such sales, also a modification of its legal form.

Articles 23–36
were abolished

Part III
TRADE REPRESENTATION OFFICES OF FOREIGN PERSONS

Article 37

(1) A trade representation office under this Act is an organizational body of a foreign person established for its economic activity or for the promotion of this activity on the territory of the Czechoslovak Federative Republic.

(2) A foreign person can establish its trade representation office and carry out operations only on the basis of registration, if it is not the case where no registration is required.

(3) Registration is not required, if from the point of view of the interest of the national economy of the Czechoslovak Federative Republic it is not expedient to bind the establishing of a trade representation office of a foreign person to registration and that under the conditions and to the extent determined by the implementary rules issued under Art. 39.

Article 38

(1) The establishing of a trade representation office is registered and the registration nullified in the field of

a) international railway, air, river and combined river and sea transport by the Federal Ministry of Transport;

b) road transport by the Ministry of Interior, or the Ministry of Interior and the Environment of the Republic on the territory of which the representation is to operate;

c) banking and financing by the State Bank of Czechoslovakia;

d) insurance by the Ministry of Finance, Prices and Wages of the Republic on the territory of which the trade representation office is to operate.

(2) The establishing of trade representation office in the other fields is registered and the registration nullified by the Federal Ministry of Foreign Trade.

(3) The body which registered the establishing of a trade representation office or changed or nullified such a registration has to submit within ten days notification about this to the Federal Ministry of Finance; if it is a trade representation office in the field given in par. 1 letter a) and b) also to the Federal Ministry of Foreign Trade. The Ministry of Finance keeps a central evidence of the registration of the trade representation offices on the basis of the allotted central filing number.

Article 39

The Federal Ministry of Foreign Trade in agreement with the Federal Ministry of Finance, the Federal Ministry of Transport, the Federal Ministry of Communications and the State Bank of Czechoslovakia shall specify by generally binding legal regulation the method and scope of the activity of the trade representation offices and details on the registration and its nullification, as well as when registration is not required.

Part IV
ESTABLISHMENT OF ORGANIZATIONAL BODIESOF CZECHOSLOVAK PERSONS IN FOREIGN COUNTRIES

Article 40

(1) Czechoslovak persons may establish their organizational bodies in foreign countries to carry out economic activity or to help its promotion on the basis and within the limits of its registration, with the exception of cases where no registration is required.

(2) Registration shall not be required if in view of the interests of the national economy of the Czechoslovak Federative Republic it is not appropriate to make the establishment of an organizational body of a Czechoslovak person in a foreign country dependent upon the granting of a registration; conditions and extent of this exception shall be specified in implementary rules issued under Article 42.

Article 41

The organizational body of a Czechoslovak person abroad is registered and the registration nullified

a) in the field of international railway transport, air, river and combined river and sea transport by the Federal Ministry of Transport;

b) in the field of road transport by the Ministry of Interior, or the Ministry of Interior and the Environment of the Republic on whose territory the Czechoslovak person has its seat or domicile;

c) in the field of banking and financing by the Czechoslovak State Bank;

d) in the other fields by the Federal Ministry of Foreign Trade.

Article 42

The Federal Ministry of Foreign Trade shall specify, in agreement with the Federal Ministry of Finance, the Federal Ministry of Transport and the State Bank of Czechoslovakia by generally binding rules of law details concerning the application for registration of organizational bodies and when registration of organizational bodies can be rejected or nullified.

Part V
CHAMBERS OF COMMERCE AND INDUSTRY

Chapter 1
CZECHOSLOVAK CHAMBER OF COMMERCE AND INDUSTRY

Article 43

(1) The Czechoslovak Chamber of Commerce and Industry shall promote the development of Czechoslovak economic relations with foreign countries.

(2) The Czechoslovak Chamber of Commerce and Industry is a juristic person associating Czechoslovak persons who carry out foreign economic activity or connected production or other economic activity.

(3) The Czechoslovak Chamber of Commerce and Industry has its seat in Prague; the regional headquarters of the Czechoslovak Chamber of Commerce and Industry are located in Bratislava.

Article 44

The Czechoslovak Chamber of Commerce and Industry shall also

a) grant expert consultation and other assistance to its members;

b) disseminate information on economy, economic conditions and legal provisions concerning economic relations with foreign countries and in connection with this activity publish and distribute informative and technical publications;

c) issue certificates concerning facts important in legal relations arising in the realization of international trade; such certificates shall bear the character of official documents.

Article 45

(1) The supreme body of the Czechoslovak Chamber of Commerce and Industry is the plenary assembly of members which especially passes the statutes of the Czechoslovak Chamber of Commerce and Industry and determines the main directions of its activity and the amount of membership fees.

(2) The quorum of the plenary assembly is formed by the presence of a majority of members; it decides by a majority of members present.

(3) In the period between sessions of the plenary assembly the Czechoslovak Chamber of Commerce and Industry is directed by a board of directors elected by the plenary assembly for a period of five years.

(4) Statutary authorities acting in the name of the Czechoslovak Chamber of Commerce and Industry are the chairman, the vicechairmen or the secretary general, elected by the plenary assembly.

Article 46

Details concerning the activities of the Czechoslovak Chamber of Commerce and Industry, the membership therein, the rights and duties of its members, the economic management and the organizational structure thereof shall be contained in its statutes. These shall be approved, upon proposal by the Federal Ministry of Foreign Trade, by the government of the Czechoslovak Socialist Republic.

Chapter 2
ARBITRATION COURT OF THE CZECHOSLOVAK CHAMBER OF COMMERCE AND INDUSTRY

Article 47

(1) The Arbitration Court acts at the Czechoslovak Chamber of Commerce and Industry as a permanent independent body for settling disputes concerning property claims by independent arbitrators in accordance with the provisions on arbitration proceeding in international trade relations.

(2) The Arbitration Court is headed by a board elected by the Board of directors of the Czechoslovak Chamber of Commerce and Industry for a period of three years. The quorum of the Board of the Arbitration Court is formed by the presence of a majority of its members; its decisions are taken by a majority of members present.

(3) The Board of the Arbitration Court consists of a chairman, vicechairmen and members. The Board elects its chairman and vicechairmen who are acting in the name of the Arbitration Court.

Article 48

The organizational arrangement of the Arbitration Court and its proceeding are regulated by the rules of procedure of the Arbitration Court proposed by the Board of the Arbitration Court and announced by the Federal Ministry of Foreign Trade in Collection of Laws.

Chapter 3
SPECIAL AND MIXED CHAMBERS OF COMMERCE

Article 49

(1) Czechoslovak persons may agree to establish a special chamber of commerce for the development of economic relations with foreign countries in a certain sphere.

(2) Czechoslovak persons may agree with foreign persons to establish mixed

chambers of commerce for the development of economic relations with a certain state or several states.

(3) Special and mixed chambers of commerce may be established with the consent of the Federal Ministry of Foreign Trade only.

(4) Details concerning the activity of special and mixed chambers of commerce under paragraphs 1 and 2, membership, rights and duties of members, management and organizational arrangement shall be specified by statutes to be approved by the Federal Ministry of Foreign Trade.

Article 50

(1) The Federal Ministry of Foreign Trade may, for the development of economic relations with foreign countries in a certain sphere or in relation to a certain state or several states, establish a special or a mixed chamber of commerce.

(2) The decision on the establishment of a special or a mixed chamber of commerce shall contain namely its name, seat, subject-matter of activity and day of establishment.

(3) The organization of special and mixed chambers of commerce established under paragraph 1 shall be determined by statutes to be issued by the Minister of Foreign Trade of the Czechoslovak Federative Republic.

Article 51

Special and mixed chambers of commerce shall be registered in the Companies Register.

Part VI
NON-COMMERCIAL EXPORT AND IMPORT

Article 52

Non-commercial export and import means export and import of objects outside foreign economic activity.

Article 53

(1) If it is required by the protection of interests of the national economy of the Czechoslovak Federative Republic or if there are particularly important reasons, non-commercial export or import of certain objects may be prohibited or made dependent on an authorization.

(2) Decisions concerning the admission of non-commercial export or import are subject to general rules on administrative proceedings (Administrative Rules) with the following deviations:

a) applications initiating the proceedings may be presented even orally;

b) decisions on admission of non-commercial export or import need not be taken in written form.

(3) Decisions on admissibility of non-commercial export or import shall be taken by the customs authorities.

Article 54

The Federal Ministry of Foreign Trade shall specify, by a generally binding rules of law, the export or import of which objects and to what extent or value is prohibited, eventually cases when non-commercial export or import is subject to authorization, which authority of the customs administration and under what conditions is entitled to grant authorizations, and details concerning the decisiontaking of admissibility of non-commercial exports or imports.

Part VII
PROTECTION OF TRADE POLICY INTERESTS

Chapter 1
REGULATION OF TRADE POLICY

Article 55

The Federal Ministry of Foreign Trade

a) submits to the Government of the Czechoslovak Federative Republic proposals concerning principles to govern the uniform foreign trade policy;

b) carries out the uniform foreign trade policy in relation with competent authorities of other states;

c) regulates and controls the realization of the uniform foreign trade policy in connection with the activities regulated by this Act and also in other fields of economic relations with foreign countries; for this purpose it issues rules of law and takes necessary measures.

Article 56

(1) In order to protect the trade policy interests or other important interests of the Czechoslovak Federative Republic, or to secure the fulfilment of international obligations, the Federal Ministry of Foreign Trade by a generally binding rules of law may

a) restrict or prohibit the exercise of foreign economic activities or the transit of goods over the territory of the Czechoslovak Federative Republic;

b) make the exercise or the transit hereunder dependent on certain terms and conditions, including the grant of official authorization or the submission of documents stipulated.

(2) The method of publishing the list of items of goods and services, which are subject to the issuing of an official authorization or the submitting of the specified documents, is determined by the Federal Ministry of Foreign Trade in a regulation issued according to par. 1

Chapter 2
PREVENTIVE INSPECTION OF EXPORTED AND IMPORTED GOODS

Article 57

(1) The Federal Ministry of Foreign Trade is authorized to control the quality and quantity of exported and imported goods or to establish a juristic person for this purpose or to entrust with realization a juristic person under its management (further only "control organization").

(2) The Federal Ministry of Foreign Trade is authorized to lay down the obligation of a Czechoslovak person delivering goods for export to provide a certificate of inspection for certain kinds of goods.

(3) The Federal Ministry of Foreign Trade or the controlling organization are authorized to prohibit the dispatch of defective goods abroad, or to make the admissibility of the dispatch of such goods dependent upon the fulfilment of stipulated conditions.

(4) The Federal Ministry of Foreign Trade shall specify by a generally binding rules of law details concerning the extent and form of the realization of inspection and the issuance of certificates of inspection.

Part VIII
TRANSITIONAL AND FINAL PROVISIONS

Article 58

(1) Foreign trade enterprises established under the hitherto valid rules shall be considered as foreign trade enterprises under this Act.

(2) Authorizations or permissions of foreign economic activity, non-commercial exports and imports and establishment of organizational bodies of Czechoslovak juristic persons in foreign countries granted under the hitherto valid rules shall be considered as authorizations under this Act.

Article 59

(1) The Czechoslovak Chamber of Commerce and Industry acting under the hitherto valid rules is the Czechoslovak Chamber of Commerce and Industry under this Act.

(2) The present organizational rules of the Czechoslovak Chamber of Commerce and Industry shall remain in force until the day of coming into force of the statutes under Article 46.

(3) The authorities of the Czechoslovak Chamber of Commerce and Industry shall function until the election of the authorities of the Czechoslovak Chamber of Commerce and Industry under this Act.

Article 60

(1) The Arbitration Court of the Czechoslovak Chamber of Commerce and Industry shall settle disputes under the Rules of the Arbitration Court of the Chamber of Commerce announced by the Decree of the Federal Ministry of Foreign Trade No. 47/1975 Coll. until the day of coming into force of the rules of procedure of the Arbitration Court to be announced under Article 48.

(2) The Board of the Arbitration Court of the Czechoslovak Chamber of Commerce and Industry shall function until the election of the Board of the Arbitration Court of the Czechoslovak Chamber of Commerce and Industry under this Act.

Article 61

General rules of administrative procedures (the Administrative Rules[1]) shall not apply to the procedures under Article 56 and 57 hereof. If persons incur losses as a result of the rejection of their application for the grant of, or modification of, an authorization, or as a result of the modification or withdrawal of such authorization or permission, or as a result of other steps taken in accordance herewith, no claim for damages shall be available to them.

Article 62
was abolished

Article 63

(1) The provision of Article 2, par. e) of the Act No. 123/1965 Coll. on the Czechoslovak Press Agency shall be amended by the deletion of the words "...and in agreement with the Ministry of Foreign Trade also in the field of trade."

(2) The following rules of law are hereby repealed:

a) the provision of the Act No. 119/1948 Coll. on the State Organization of Foreign Trade and International Forwarding with the exception of the provisions concerning nationalization;

b) Act No. 85/1972 Coll. on Procedures concerning Conclusion of Treaties on Economic Cooperation with Foreign Countries;

c) Article 38, par. 2 of the Act No. 133/1970 Coll. on the Sphere of Action of Federal Ministries;

d) Article 3 of the Act No. 61/1952 Coll. on Maritime Navigation;

e) Decree of the Government No. 11/1959 Coll. on the Amendment of the Sphere of Action in the Field of Import and Export of Precious Metals for Industrial, Technological or Consumption Purposes;

f) Decree of the Minister of Foreign Trade No. 103/1960 Coll. on the Sphere of Action of the Czechoslovak Chamber of Commerce and its Organization, as amended by decrees of the Minister of Foreign Trade No. 32/1961 Coll. and of the Federal Ministry of Foreign Trade No. 69/1978 Coll.;

g) Decree of the Minister of Foreign Trade No. 121/1968 Coll. on Authorization to Engage in Foreign Trade Activities, as amended by Decree of the Minister of Foreign Trade No. 164/1969 Coll.;

h) Decree of the Ministry of Foreign Trade No. 31/1964 Coll. on Proceedings concerning Export, as amended by Decree of the Ministry of Foreign Trade 4/1969 Coll.;

i) Decree of the Ministry of Foreign Trade No. 32/1964 Coll. on Proceedings concerning Import, as amended by Decree of the Ministry of Foreign Trade No. 5/1969 Coll.;

j) Decree of the Ministry of Foreign Trade No. 17/1967 Coll. on the Regulation of Collectors Exchange of Postage Stamps and other Objects of Philatelistic Interest with Foreign Countries;

k) Decree of the Minister of Foreign Trade No. 8/1969 Coll. on Authorizations concerning Import and Export of Goods and some other Activities of Foreign Trade;

l) Decree of the Federal Ministry of Foreign Trade No. 125/1975 Coll. on Realization of Foreign Trade Activity for Foreign Enterprises;

m) Decree of the Federal Ministry of Foreign Trade No. 58/1979 Coll. on Prohibition or Restriction of Export of Some Kinds of Objects in Tourist Relations.

(3) In addition, the following rules of law are abolished:

a) Decree of the Government of the Czechoslovak Federative Republic No. 157/1980, Coll., on the grant of authorization to enter into, modify or repudiate some contracts of industrial specialization or cooperation in production with foreign countries as amended by the Decree of the Government of the Czechoslovak Socialist Republic, No. 21/1987, Coll.;

b) Decree of the Federal Ministry of Foreign Trade No. 167/1980, Coll., on procedures to be followed when liquidating Foreign Trade Enterprises;

c) Decree of the Federal Ministry of Foreign Trade No. 54/1981 Coll. on Productive Councils of Foreign Trade Enterprise[11a)].

Article 63a

Decrees or part thereof, establishing a foreign trade enterprise under the previously valid rules of law shall become null and void as of the day where their contents are modified by the exercise of activities under Article 13 to 15 hereof[12)]

II

(1) Qualification or authorization for foreign trade activities and foreign economic services, as well as for the establishing of trade representation office and the operation of them and for the establishing of organizational bodies of Czechoslovak juristic persons abroad, granted according to the present rules is considered as authorization, or registration, under this Act

(2) The Federal Ministry allotts a central evidence number to persons which received authorization for foreign trade activity or foreign economic services up to the time this Act was adopted; the bodies of state administration given in Art 19 must inform the Federal Ministry of Foreign Trade within 30 days after the date this Act came into force about a list of persons, which received authorization for foreign economic services and the contents of the issued authorization.

(3) Generally binding rules of law[13)] issued according to Art 11 are considered to be generally binding rules of law issued according to Art. 22. Authorization for foreign trade activities according to Art. 6, par. 1, letter f) is considered as authorization for foreign economic services according to Art. 19, par. 1, letter i)

(4) For the export and import carried out by a Czechoslovak person, which this person would be authorized to carry out without authorization according to Art. 7, par. 2, letter b) of the former version of the Act, if it is realized to meet the obligations of delivery on the basis of an agreement on production cooperation (Art. 23 of the former version of the Act) validly signed before this Act was adopted, or the obligation to deliver which arose before this Act was passed on the basis of such an agreement on cooperation, neither registration nor authorization is required for a period of three months.

(5) The bodies of the socialist self-administration of the foreign trade enterprises are abolished and the election period of the general director of the foreign trade enterprise ends on the date this Act is adopted, however, the general director continues in his office up to the date on which the general director nominated by the Minister of Foreign Trade (Art. 14, par. 1.) assumes responsibility to act on behalf of the foreign trade enterprise.

(6) If in Act No. 42/1980 Coll. on Economic Relations with Foreign Countries in the version of the Act No. 102/1988 Coll. the term Czechoslovak Socialist Republic is used it should be read Czechoslovak Federative Republic.

III

The presidium of the Federal Assembly is authorized to announce in the Collection of Laws the complete version of the Act No. 42/1980 Coll. on Economic Relations with Foreign Countries as follows from the Acts which modify and amend it.

IV

This Act shall become effective as of May 1st, 1990

The Act No. 102/1988 Coll. modifying and amending the Act No. 42/1980 Coll. on Economic Relations with Foreign Countries became effective as of July 1st, 1988.

4) Art. 521 of the International Trade Code
5) Art. 2, a) and b) of the Act No 123/1965 Coll on the Czechoslovak Press Agency
6) Act No. 142/1970 Coll on Foreign Exchange Control
7) Act No 144/1970 Coll on the Czechoslovak State Bank
8) Act No 118/1975 Coll and Act No 133/1975 Coll on Advocacy
9) Act No 36/1967 Coll on Experts and Interpreters
9a) Para 600–624 of the International Trade Code.
9b) Act No. 158/1989 Coll on banks and saving banks.
9c) Para. 26a and the following of the Economic Code.
9d) Art. 352–354 Act No. 99/1963 Coll. Civil Procedure Code as amended on later occasions.
10) Art. 44 par. (1) (6) of the Literary, Scientific and Artistic Creative Works Act No 35 of 1965, Coll (the Copyright Act 1965)
11) The Administrative Procedure Code (Administrative Rules) No 71 of 1967, Coll
11a) Art. II of the Act No. 102/1988 Coll., modifying and amending the Act No 42/1980 Coll on Economic Relations with Foreign Countries.
12) E. g. Decree of the Minister of Foreign Trade No 312/1953 Off Bul on the Establishment of Strojexport, Foreign Trade Enterprise for the Export of Machinery and Equipment as amended on later occasions and Decree of the Minister of Foreign Trade No 74/1971 Coll on the Establishment of Omnia, Foreign Trade Enterprise.
13) For example, the Decree of the Federal Ministry of Foreign Trade and the Federal Ministry of Finance No 8/1981 Coll., on coupons of the foreign trade enterprise Tuzex and the Decree of the Federal Ministry of Finance No 83/1988 Coll. on the conditions of the sale of goods and granting services for foreign exchange on the territory of the Czechoslovak Federative Republic

Remarks on the Amended Enterprise with Foreign Property Participation Act

When, on November 8, 1988 the Enterprise with Foreign Property Participation Act (known as the Joint Venture Act) was adopted (published in the Collection of Laws and Decrees under the No. 173 and entering into force as of January 1, 1989) one could hardly imagine that within a very short time, basic changes in the Act would become necessary.

However, the radical political and economic changes in Czechoslovakia brought about the necessity – together with amendments and modifications of other legislation – to amend and modify the above mentioned Act. This concept fits with the complex legislative work i.e. adoption of amedments or new Acts, such as e.g. State Enterprise Act, the Joint-Stock Companies Act, the Act Modifying and Amending the Economic Code, the Act on Private Entrepreneurial Activities of Natural Persons, Economic Relations with Foreign Countries Act. etc.

Obviously, all legislation is meant as an interim regulation for a transitional period, at the end of which the Czechoslovak economy would have been transformed into a market economy system. This explains why, apart from elements of liberalization, the new legislation still enacts a series of restrictions which should gradually fade away.

In addition, it is apparent that during the transitional period experience with the application of this new legislation will be gathered and used in the committees preparing the new Commercial Code, Companies Act and similar Acts, so that our regulation will be harmonized with the European standards. A contribution towards this goal is also expected from the necessary changes in the property law, taxing legislation and rules governing bankruptcy.

Upon the achievement of these aims, there will be no need in the future to have a separate Act regulating joint venture corporations which, basically, connects the principles of the former strict, planned economy régime with the marketing system. It is expected that some time in the future the current rules of commercial and companies law, not discriminating between the place from where the investment comes, but setting forth equal rules for all, will be sufficient. However, we have not yet reached that point and, consequently, it is necessary to amend the existing Act.

What are the basic changes contained in the Amended Act?

(1) It is now possible for private Czechoslovak citizens to take part in joint

venture corporations. (Article 2).

Under the previous rules, a joint venture corporation could be established by foreign companies (or better to say by bodies corporate) or persons on foreign side, but exclusively by bodies corporate on the Czechoslovak side so that Czechoslovak natural persons were practically excluded from establishing a joint venture corporation in Czechoslovakia. The amendment sets Czechoslovak natural persons on equal footing with Czechoslovak bodies corporate which means that, in the future, Czechoslovak parties in such a joint venture may be any persons or corporations having the necessary capacity to act.

(2) It is now possible that foreign parties alone set up an enterprise in Czechoslovakia. (Article 2).

Even if the hitherto valid rules from 1988 abolished the original provision from 1985 prohibiting the foreign party from having a majority interest in the joint venture corporation and made it possible to establish such corporation with a majority interest in foreign hands (theoretically up to ninety-nine percent the corporate capital) the strict requirement was based on the concept that, in fact, it is a "joint venture" i.e. a venture of two parties of which one had to be a Czechoslovak party. Under the new rules, foreign parties are free to establish their corporations in Czechoslovakia which will be fully in their hands (one hundred per cent.) or, in other words, corporations wherein no Czechoslovak party will participate.

(3) It is now possible to take part in an existing corporation. (Article 2)

Formerly, the rules allowed the establishment of a new corporation (joint venture) only with at least one foreign and one Czechoslovak party. This has now been changed. A foreign party may participate in a corporation that is already in existence. Foreign parties are now at the liberty to purchase a portion of a Czechoslovak existing corporation without it being necessary to create a new legal entity.

(4) Authorization requirements are simplified. (Article 5–7)

While, under the existing rules, the Czechoslovak party had to apply for an authorization to enter into or to modify the contract to establish a joint venture corporation to the central authority of State administration i.e. to the respective ministry in the resort of which the activities of the future corporation (in the field of banking the authority granting such authorization was the State Bank of Czechoslovakia), now in view of the fact that this régime proved rather rigid, the new legislation introduces a different authorization régime. In future there will be only one place to which applications for authorization will be addressed, namely the Federal Ministry of Finance (which will act in agreement with the Republican Ministries of Finance, Pricing and Wages). The exception set forth for the field of banking remains unchanged so that the authority granting the authorization will be again the State Bank of Czechoslovakia. Also the procedures to be used are simplified: the authorization does not, strictly speaking, give

the right to the prospective partners to enter into the contract establishing the joint venture but it directly gives the power to the parties to establish such a joint venture corporation. In addition (and this is another change in the existing rules), such application (in view of the new legislative concept) may be filed also by the foreign party. Last but not least, the period within which the granting authority is to take a decision upon the application is reduced from the three (3) months formerly binding to sixty (60) days.

Requirements which have to be met in any application are basically reduced. Thus, it will no longer be necessary in the future to present technical and economic reports (feasibility study) together with the application.

(5) It is now possible that the contract establishing a joint venture corporation is subject to the régime of a legislation other than Czechoslovak law. (Article 3).

Under the preceding rules not only the establishment, legal form, legal relations and the winding up of a joint venture corporation were subject to the régime of Czechoslovak law (which is quite customary since the joint venture is a Czechoslovak corporation), but also the contract itself establishing such joint venture was so subject to the régime of Czechoslovak material law. The new legislation enables the parties to select a law to govern this contract other than Czechoslovak law. Obviously, the parties are free to insert into their contract an arbitration agreement conferring jurisdiction upon foreign arbitral courts or tribunals, which they were, of course, free to do under the previous régime, too.

(6) The number of obligatory funds to be created is restricted. New rules govern the creation of reserve fund. (Article 12)

The original Act of 1988 set forth the duty for the parties to create three obligatory funds, namely the reserve fund, the cultural and social needs fund and the remunerations fund. The amendment brought about a substantial simplification: in future the joint venture corporation will have to establish a reserve fund only. At the same time a new rule provides for the modalities of feeding the fund fixing the necessary amount of the fund at ten (10) per cent the corporate capital.

(7) Duty to offer foreign exchange under the respective foreign exchange rules is introduced together with restrictions governing the possibility to open accounts. (Article 15-16)

The existing foreign exchange régime applicable to joint venture corporations was rather liberal. Such corporations were not duty bound to offer their own foreign exchange liquidities for sale to the respective (foreign exchange) Czechoslovak banking institutions. They were at liberty freely to dispose with such liquidities unless they earned same ultra vires. In addition, the joint venture corporations were free to open foreign exchange accounts with foreign banks without any restrictions.

The new legislation represents a more strict approach. The duty to offer is introduced or, in other words, the joint venture corporation will have to sell at least a part of their foreign exchange earnings to the respective Czechoslovak

Bank. In addition, they will need an authorization by the State Bank of Czechoslovakia to open a foreign exchange account with a foreign bank. Dramatic discussions preceded the adoption of these provisions. An important part of experts (practical businessmen) pointed out that in their opinion these rules would adversly affect the interest of foreign investors to invest their monies in Czechoslovakia. Other part, however, saw in the rule the necessary condition which would enable our economy to reach the convertibility of Cz. crown which should materialize within the shortest possible time.

For a concise information, let us now recapitulate the basic elements of the new régime:

(A) Branches Where Enterprises Are Admissible

Joint ventures may be established in practically all branches with the exception of those which are necessary for national defence and security.

(B) Participants

Both Czechoslovak and foreign persons, juristic as well as natural, are entitled to establish joint venture corporations.

(C) Legal Forms

The following forms of corporations are admitted:

- Joint-Stock Company
- Association
- Private company limited by shares
- Limited partnership
- Partnership limited by shares
- General commercial partnership

(D) Shares

Shares held in foreign hands are admitted up to one hundred (100) per cent.

(E) Authorization to Establish

Generally, the Federal Ministry of Finance in agreement with the Republican (i.e. Czech or Slovak) Ministry of Finance, Pricing and Wages will grant such authorizations. In the banking business, the authorization will be granted by the State Bank of Czechoslovakia.

(F) Enterprise Taxes

These are regulated by the Act No. 157 of 1989, Coll.

- Income tax. It amounts to twenty (20) per cent the assessable income, unless the assessible income exceeds 200,000 Cz. crowns. In this case the rate is forty (40) per cent. Exceptions may be granted.

- Wages volume tax. Generally, it amounts to fifty (50) per cent the volume of wages paid. In certain branches (tertiary sphere) the rate is twenty (20) per cent. Exceptions may be equally granted.

(G) Tax on Dividends

A foreign party in a joint venture company will pay, generally, a tax on dividends at the rate of twenty-five (25) per cent. Specific régime will apply in

those cases to which the rules of treaties which Czechoslovakia concluded with several countries to avoid double taxation, apply. The rates vary in this instance from zero (0) to fifteen (15) per cent. Dividends paid to Czechoslovak parties will be added to their assessable income and taxed accordingly.

(H) Foreign Economic Activities

These are subject to the régime of the Economic Relations with Foreign Countries Act. Majority of all activities may be exercised under the new amendment (dating from 1990) on hand of a simple registration. The remaining activities must be authorized.

(I) Foreign Exchange Régime

- thirty (30) per cent foreign exchange earned must be offered for purchase to the State;

- accounts in foreign exchange kept with a foreign bank may be opened only upon an authorization having been granted by the State Bank of Czechoslovakia.

- credits may be taken from a foreign Bank only on hand of an authorization by the Stae Bank of Czechoslovakia.

(J) Repatriation of Profits

Basically, such repatriation is possible only if there are sufficient liquidities in foreign exchange.

But a more liberal régime shall govern such repatriation in case of specific treaties to foster and protect foreign investment.

It is the aim of these remarks to give an initial information on changes having taken place lately in the legal regulation of the given topic to those foreign parties who are interested in trading in Czechoslovakia. When preparing them, the basic and main criterion was speed. As soon as possible, the Czechoslovak Chamber of Commerce and Industry intends to prepare a new commentary on the Enterprise with Foreign Property Participation Act wherein more attention will be paid to individual changes and amendments in the Act itself but also a number of other questions, resulting from the new economic legislation will be treated

The Enterprise with Foreign Property Participation Act

The Act of April 19, 1990 amending the Enterprise with Foreign Property Participation Act No. 173 of 1988, Coll.

The Federal Assembly of the Czechoslovak Federative Republic has passed the following Act:

Part I
GENERAL PROVISIONS

Article 1
was abolished.

Article 2

(1) An enterprise with foreign property participation (hereinafter referred to as "enterprise") shall be a juristic person engaging in economic activities with a seat situated on the territory of the Czechoslovak Federative Republic, provided a foreign participant takes part in its establishment and, after such establishment, in its trading.

(2) For the purposes hereof, a "foreign participant" shall include both a juristic or a natural person with a seat or domicile outside the territory of the Czechoslovak Federative Republic, who participates with an investment in the enterprise.

(3) For the purposes of this Act, "a Czechoslovak participant" shall include both a legal or a natural person with a seat or a domicile situated on the territory of the Czechoslovak Federative Republic who participates, together with the foreign participant, with its investment in the enterprise.

(4) In addition, the present Act shall apply also to cases where the enterprise is established exclusively by a foreign participant or where such a foreign participant participates exclusively in its trading.

Article 3

The establishment, the legal form, as well as the legal relations, and the liquidation of the enterprise shall be governed by Czechoslovak law.[1]

Article 4

(1) The enterprise stands for the breach of its commitments and other obligations with its own assets.

(2) The enterprise is not liable for commitments of the State or for commitments of other juristic persons, and the State and such other juristic persons are not liable for commitments of the enterprise; this does not exclude liabilities originating in accordance with appropriate general rules of law.

Part II
AUTHORIZATION TO ESTABLISH AN ENTERPRISE

Article 5

An enterprise may be established only on the basis of, and to the extent of, an authorization to establish to be granted by the Federal Ministry of Finance having heard the opinion of the Ministry of Finance, Prices and Wages of the Republic, on the territory of which the enterprise will have its seat (hereinafter referred to as "the authorization"). In the field of banking business, such authorization is to be granted by the Czechoslovak State Bank.

Article 6

(1) An application for authorization may be filed by any participant. In such application, the applicant shall state:

a) the name, seat, legal form and subject-matter of trading of the enterprise,

b) the name, seat and/or domicile as well as the subject-matter of trading of the participants,

c) the basic capital, the shares of the individual participants, the form of same as well as the currency in which same will be paid, the prescribed amount of the reserve fund, the participation of individual participants in the bodies of the enterprise provided such determination in the bodies is not inconsistent with the legal form thereof as well as the distribution of profits and coverage of losses, if any, unless same does result from the legal form of the enterprise.

(2) If more participants establish the enterprise, a draft memorandum of agreement establishing same as well as draft bye-laws or statutes of same shall accompany the application.

Article 7

(1) When deciding upon the grant of an authorization the respective authority

shall examine whether there is hope that the enterprise being established will contribute to the increase of fruitful participation of Czechoslovak economy in the international division of labour and whether during its economic activity will be able to create sufficient financial resources both in Czechoslovak as well as in foreign currencies.

(2) An authorization for business and trading activities may be granted in any branch of national economy with the exception of those important for defence and security of the Czechoslovak Federative Republic.

(3) A dicision upon an application shall be taken in administrative proceeding[3] not later than sixty ((60)) days following the date of same having been filed.

Article 8

An authorization granted to the prospective enterprise under Article 5 hereof shall substitute all authorizations necessary for the respective type of economic activity under specific rules of law, provided the authorization under Article 5 hereof is granted by an authority who has the power to grant such authorizations to engage in said economic activities and the authorized type of economic activity of the enterprise covers up such activities.

Part III
MANAGEMENT OF THE ENTERPRISE

Chapter I
ECONOMIC ACTIVITIES

Article 9

In the State Plan of Econonomic and Social Development, no tasks may be imposed on the enterprise.

Article 10

Legal relations arising out of cooperation of the enterprise with Czechoslovak juristic persons shall be governed by the Economic Code, provided that provisions of the Economic Code setting forth the obligation to conclude, modify or cancel a contract without the actual intention of the parties, or the power to create, modify or cancel such obligations, as well as those provisions which, due to their contents, do not correspond to the nature of the enterprise or which are inconsistent with its legal standing as defined hereunder, shall not apply. The rules of the International Trade Code shall not be affected thereby.

Chapter II
FINANCIAL MANAGEMENT

Article 11

The Enterprise shall be assessable only for taxes provided for in the Act.

Article 12

After its establishment, the joint ventures corporation shall create a reserve fund up to the amount, and in a manner, set forth in its bye-laws or statutes. This fund shall be yearly fed from the earning after taxes by amounts of not less than five (5) per cent the distributable profits, until the amount fixed in the bye laws or statutes is reached. The minimum amount of a reserve fund shall be ten (10) per cent the basic capital. The enterprise shall feed a part of the reserve fund in foreign currencies.

Article 13

Upon payment of taxes and contribution into the reserve fund (Art. 12 hereof) the enterprise shall be free to distribute the remaining part of available profits among the parties.

Article 14

(1) The annual balance sheet of the enterprise as well as its financial statement for each year shall be subject to an approval by two auditors.

(2) The auditors shall exercise their activities in an independent way, using their necessary professional knowledge.

(3) Rules governing particulars of the functions of auditors and their appointment by the respective authority of State administration shall be enacted by the Federal Ministry of Finance in a generally binding rule of law.

Chapter III
FOREIGN EXCHANGE MANAGEMENT

Article 15

The duty to offer (foreign exchange) set forth in foreign exchange regulations, shall apply to an enterprise, too[4].

Article 16

An enterprise shall be free to open foreign exchange accounts with a Czechoslovak foreign exchange banking institution or, with the authorization of the Czechoslovak State Bank, with foreign banks.

Article 17

The conversion of the Czechoslovak currency into foreign currency and vice versa shall take place at rates fixed by the Czechoslovak State Bank.

Article 18

An enterprise shall be free to take foreign exchange credits from Czechoslovak foreign exchange banking institution; it may take such credits from foreign banks only with the aathorization of the Czechoslovak State Bank.

Chapter IV
SOCIAL AND ECONOMIC INFORMATION

Article 19

An enterprise shall

a) set up a system of social and economic information in concordance with the respective generally binding legal provisions applicable to Czechoslovak organizations, the subject-matter of enterprising (business and trade) of which is similar to that of the enterprise;

b) keep accounts and books in Czechoslovak currency in accordance with the respective generally binding legal provisions; exceptions, if any, based on the different nature of the enterprise or its legal standing hereunder may be granted to the enterprise by the Federal Ministry of Finance;

c) supply the respective authorities with the accounting and statistical data to the extent, in the manner and within terms set forth in the generally binding legal provisions.

Part IV
TRANSFER OF CAPITAL

Article 20

(1) In case of winding up the enterprise or its liquidation, or in case of the sale of shares up to the amount previously paid (invested), the foreign participant is free to transfer abroad the proceeds from his part. Provided that, the transfer shall be made in the currency formerly paid in.

(2) In addition, the foreign participant may transfer abroad his part in the earning of the enterprise and, in case of winding up, liquidation or sale of its shares, the part exceeding the capital formerly paid in, provided the enterprise has sufficient foreign exchange funds.

Article 21

(1) Persons whose domicile is abroad, employed by such an enterprise, shall

be free to transfer abroad their income earned in connection with their employment with the enterprise.

(2) The enterprise shall be free to transfer sums abroad destined to cover social insurance contributions in favour of persons on its staff, whose domicile is abroad, or to transfer same in accordance with the directives of such persons, provided the insurance is not contracted in the Czechoslovak Federative Republic. The term "social insurance" as used throughout this Act shall cover insurance contribution in case of illness and pregnancy, children bonuses, accident and old age insurance as well as insurance contribution for unemployment.

(3) The enterprise shall continue contributing to the old age insurance scheme of persons on its staff whose domicile is not in the Czechoslovak Federative Republic.

(4) Sources from which all payments under the preceding paragraphs may be made, shall be exclusively the proper foreign exchange funds of the enterprise.

Article 22

(1) The property of the enterprise on the territory of the Czechoslovak Federative Republic may be expropriated or its rights and interest in such property may be restricted only in accordance with the rules of the Act.

(2) If measures under par. (1) thereof are taken, the foreign participant shall receive a compensation corresponding to the actual value of his property affected by said measures at the time of their being enforced. The amount of compensation shall be freely transferable abroad in the currency which the foreign participant paid when acquiring his shares in the corporation or, otherwise, in the currency of the country in which it has its seat or domicile.

Part V
WINDING UP

Article 23

(1) An enterprise shall not cease to exist, unless and until wound up. The purpose of such procedure is to settle the property relations of the enterprise being wound up.

(2) If the liabilities of the enterprise exceed its assets, it shall be wound up by means of liquidation under the provisions of Art. 352 through 354 of the Civil Procedure Code.[9]

Article 24

(1) The enterprise shall apply for the entry of its winding up and of the appointed liquidator into the Companies Register. During the term of its winding up it shall add to its name the words "being wound up" or "in liquidation" as the case may be.

(2) At the day of the entry of the liquidator into the Companies Register, the corporate bodies shall cease to exercise their functions. The liquidator shall have the power to act in the name, and on behalf, of the enterprise in all matters connected with its winding up.

Article 25

(1) The enterprise shall prepare a balance sheet as of the date of the commencement of its winding up. It shall remit one copy thereof to the liquidator and other copies to the respective authorities.

(2) Within thirty (30) days following his entry into the Companies Register, the liquidator shall prepare the initial financial statement as of the date of the commencement of the winding up and remit same to the participants, together with the time schedule of winding up, its budget and protocol of inventory taken during an extraordinary check of the economic assets available, as of the date of the commencement of the winding up.

(3) During the winding up, the liquidator shall, inter alia:

a) concentrate all financial means available with one Czechoslovak banking institution;

b) complete and finalize the current business of the enterprise;

c) pay off all taxes and dues;

d) pay off all debts and obligations;

e) sell the assets of the enterprise in the most economic and speedy way or dispose of same in another way, in accordance with the decision of the participants;

f) report to the participants quarterly and annually on the progress of the winding up, accompanying his reports by quarterly and annual balance sheets.

Article 26

(1) Upon completing the winding up, the liquidator shall prepare the final balance sheet as of that day and submit same to the participants together with the final report on the course of winding up for their approval.

(2) Upon examination and approval of the balance sheet by the participants and upon paying off the taxes due, the liquidator shall:

(a) dispose of the balance left in accordance with the decision of the participants;

(b) place all written records and accounting documents in a safe custody;

(c) inform the court of the completion of the winding up applying for striking the enterprise off the Companies Register.

Part V

COMMON, TRANSITIONAL AND FINAL PROVISIONS

Article 27

The provisions of this Act shall apply, unless otherwise provided in an international treaty which is binding on the Czechoslovak Federative Republic.

Article 28

The Government of the Czechoslovak Federative Republic may, by way of a governmental decree, state conditions in which an enterprise may be established without an authorization or fix different rules and procedures for granting such authorizations.

II

Authorizations granted prior to the present Act entering into force, in accordance with rules hitherto valid, governing memoranda of agreement to establish an enterprise shall be regarded as authorizations granted hereunder.

III

The Presidium of the Federal Assembly of the Czechoslovak Federative Republic is authorised to publish the full wording of the Enterprise with Foreign Property Participation Act No. 173 of 1988 with the modifications and amendments hereunder in the Collection of Laws and Decrees.

IV

This Act shall enter into force as of May 1st, 1990.

[1] Companies Limited by Shares Act No. 243 of 1949, Coll., On Legal Relations Arising in International Business Transactions Act No. 101 of 1963 Coll. (the International Trade Code)

[3] Administrative Procedure Code Act No. 71/1967, Coll.

[4] Art. 12 paragraph (1) a) of the Foreign Exchange Act No. 162 of 1989, Coll. Decree No. 169 of 1989 Coll. Implementing the Foreign Exchange Act as amended by the Decree of April 19, 1990

[5] Civil Procedure Code Act No. 99/1963, Coll. as amended on later occasions

Remarks on the Joint-stock Companies Act

On the territory of present-day Czechoslovakia, Austrian regulations were in effect until 1919 in Bohemia, Moravia and Silesia, Hungarian regulations in Slovakia. Provisions concerning joint-stock companies were included above all in the Imperial Patent of November 26, 1852, No. 253 of the Imperial Code (the so-called corporation law) and in the General Trade Code with introductory law of December 17, 1862, No. 1 of the Imperial Code of 1863. Another important regulation was the so-called "stock regulation" No. 175/1899.

After the birth of the independent Czechoslovak Republic, in consequence of the reception norm (in a law passed and promulgated on October 28, 1918) the above regulations remained in effect in Bohemia, Moravia and Silesia. For the same reson, the Hungarian trade code of 1875 (Article XXXVII) remained in effect in Slovakia and Carpathian Ukraine. The regulations were supplemented, in the period up to 1938, only in details by government or ministerial provisions concerning especially some matters in connection with the establishment of stock banks, balance sheets and statements of joint-stock companies, etc. No changes were made in the basic legal regulations.

In 1945, the nationalization decrees affected the property of many large joint-stock companies (especially those doing banking and money transactions, but also production enterprises), but left intact the basic legal regulations. It was only in 1948 that substantial changes were introduced in consequence of fundamental socio-political changes (extensive nationalization of industrial enterprises, establishment of state economic organizations, and gradual elimination of private enterprise in general.)

By Law No. 243 of November 17, 1949, Czechoslovak joint-stock companies were required to submit applications for state licences and for official approval of their statutes which had to conform to the provisions of this law which also provided that those joint-stock companies that would fail to do so or not receive the licence would be abolished. In this way, practically all joint-stock companies were liquidated, with the exception of those founded for foreign trade operations according to Law No. 119/1948, on state foreign trade organizations and international forwarding.

This law on joint-stock companies superseded all previous regulations; the law was very brief, limited only to fundamental definitions and the required content of the statutes of joint-stock companies.

In the period which followed, joint-stock companies virtually disappeared from economic life. Foreign trade joint-stock companies were merely formal

companies whose shareholders were national enterprises supplying to the companies goods for export. The terms, joint-stock companies and shares in general, disappeared from public consciousness.

In its programme statement of December 1989, the federal government included a timetable of legislative work aimed at making private enterprise possible to the full extent, as well as privatization of nationalized property. One of the laws which are to clear the road to a market economy is the new law on joint-stock companies. It is only natural that lawmakers resorted above all to the regulations which had their tradition in Czechoslovakia, i.e. to the old Austrian and German regulations. Yet there was a number of questions which needed clarification, in view of the need for a fast development of private enterprise.

The new Joint-stock Companies Act, passed on April 18, 1990, can be briefly characterized as follows:

Consent of the state is not necessary for founding joint-stock companies, and the state does not supervise them. Establishment requires that the company be listed in the companies register, kept at present by district courts in the seats of regional courts. The public has access to the registers.

The operations of joint-stock companies are not limited to certain branches of the economy. The only purpose of the legal regulations governing the operations of joint-stock companies is to protect the interests of shareholders and creditors.

The law does not contain provisions for the participation of foreign nationals in joint-stock companies. It is, however, necessary to respect the Act on the Enterprise with Foreign Property Participation, and the Foreign Exchange Act. In the first case, the Federal Ministry of Finance must approve the establishment of a joint-stock company, in the second case, a foreign-exchange permit is required for selling shares to foreign nationals.

The law does not regulate mutual capital influencing of joint-stock companies and their mergers. Provisions for this will be included in the law on anti-monopoly measures.

One of the important provisions of the law is that permitting a joint-stock company to be established by one founder, subscribing the entire capital stock, the founder must be a juristic person. This enables the state to transform the existing state enterprises into joint-stock companies. Simultaneous establishment of joint-stock companies by natural persons is possible but in such cases, a company must be founded by at least two persons (in keeping with the term "company").

The law defines joint-stock companies as juristic persons carrying out entrepreneurial activity by means of capital formed by investments of participants (shareholders), of previously fixed nominal value (Art. 1).

Joint-stock companies can assume rights and obligations, and can be therefore also parties in court actions (Art. 2). A characteristic feature of joint-

stock companies is that shareholders are not personally liable to the company's creditors. Their only obligation towards the company is to pay up their investments.

The company's liability to its creditors is only to the extent of its assets, i.e. the capital stock and the other assets. The capital stock is divided into shares, expressed in the company statutes in certain amounts. The law does not recognize shares expressed in a fraction of the capital of the capital stock.

The capital stock is a sum expressing the basic capital with which, according to the statutes, the company is to start its operations. The initial basic capital consists of paid up shares and of claims of the company against shareholders who are yet to make their full subscriptions.

The capital stock must be expressed in the company statutes in a certain sum, regardless of which property values it consists. This sum cannot be changed at will. It means that a joint-stock company is based on a fixed capital stock. The statutes must be changed to permit the capital stock to be increased or decreased. According to Art. 16 of the law, capital stock must be worth at least 100,000 Cz. crowns.

The term "share" is used in the law in three meanings: as a part of capital stock, as the legal status of the members of the company (shareholders), the sum of their rights and obligations, and finally as a document attesting to the shareholder's participation in the company.

Since shares are parts of the fixed capital stock, they must be expressed by a certain sum; according to Art. 5 of the law, at least 1,000 Cz. crowns. Shares cannot be subdivided. In Art. 14, the law permits one share to be owned by several persons but it must be represented vis-a-vis the company by only one person, representing the other owners of the share concerned.

As regards shareholders' rights, the law defines three claims: the claim to the dividend, i.e. part of the net annual profit (Art. 3), the claim to participation in the management of the affairs of the company, in the form of voting at general meetings (Art. 33), and the claim to a proportionate part of the net assets in the event that the company is dissolved (Art. 3).

The content of these claims need not be the same for all shares. Owners of certain shares must be granted various privileges, e.g. claim to a higher share of net profit or the remaining assets after liquidation. These priority shares can be issued to an aggregate value of only one half of capital stock (Art. 8).

Besides priority shares, also interest shares can be issued (up to ten /10/ per cent of capital stock); these shares guarantee their owner at least interest on the nominal value of the shares, when the company makes no profit in any one year. As a rule these are founder's shares by which the founders of a company guarantee for themselves, for the time until the company begins to show profit, making it possible to pay dividends, payments of interest. The issue of these shares, the period for which they are issued and the interest rate must be

provided for in the company statutes. The claim to interest is a claim towards the company. When the company pays dividends, the shareholder is entitled to a dividend in excess of the interest which is included in the total amount of the dividend. If the dividends are lower than interest, only interest is paid to shareholders.

The law also permits "staff shares" to be issued, and sold to company employees at an advantageous price, i.e. under the quoted price or even below par. The statutes regulate the issue of these shares and details of their acquisition; the law only specifies that they must be shares registered in the name of the owner, and be transferable only among company employees and retired employees. When employment is terminated (in another way than retirement), these shares must be returned to the company which has to pay the quoted price for them, or at least their nominal value, unless otherwise provided in the statutes. The same rights pertain to staff shares as to all the other kinds of shares. With exceptions specified in the statutes, shareholder's rights can be freely transfered and inherited.

The share is a document attesting to the rights of the shareholder. It can be a share registered in his name, or a bearer share. Both kinds can be issued by one company. According to provisions of Art. 3 of the law, the share is an obligation because only by the share can the shareholder's rights be transferred, and only for the share is the shareholder's investment returned or repaid. Shares registered in name are securities because they can be transfered by endorsement. Also interim documents (Art. 7) and redeemed shares (Articles 80, 82) are securities. In transfers by endorsement, the law refers to the provisions of the Bills and Cheques Act No. 191/1950. Bearer shares can be freely transfered by mere handing over (Art. 4). The law also specifies the content of the share (Art. 6).

For the founding of joint-stock companies, the law abandoned the previous concession system under which a state licence was needed to establish a joint-stock company. The founder of a joint-stock company may be a natural person or a juristic person including the state (which is listed separtely in Art. 15 but whose character of a juristic person is not in doubt.) The law even permits that founder be a single person, which is exceptional in legislation concerning joint-stock companies. The reason is to make it possible for the state to transform its existing state enterprises into joint-stock companies. A difference exists in the way a company can be established by one founder: whereas a juristic person as the sole founder can subscribe the entire capital stock, and become the only holder of all shares, a natural person, i.e. an individual, must establish a company successively, through a public subscription of shares. Such person cannot subscribe the whole capital stock, and be the holder of all shares. It is, of course, possible for such person to become the sole shareholder during the existence of the company, by acquiring the shares owned by the other shareholders.

The law requires that the subscription of shares be based on a founding contract (when there are several founders) or on a founding plan (when there is only one founder). The obligatory content of the founding contract and the founding plan is prescribed by the law in Art. 17. The founding contract requires a simple written form but the copies must be notarially verified.

When a part of the capital stock is to be formed by a non-monetary share, the founding contract (plan) must contain the character and value of the investment, the firm making it, and the name of the sworn expert who has assessed the value.

It ensues from the provisions of Articles 17–27 of the law that the following are the prerequisites to establish a joint-stock company:

a) founding contract or a founding plan;

b) subscription of capital stock of at least 100,000 crowns, of which at least thirty (30) per cent must be paid in before the company is entered in the companies register, a sum not lower than 50,000 crowns;

c) in the event of a successive establishment of the joint stock company, the holding of a constituent general meeting;

d) statutes, the minimal content of which is prescribed in Art. 26 of the law;

e) registration of the company in the companies register. The application for registration is governed by the provisions of Art. 27 of the law.

The organs of the joint-stock company are: the general meeting, the board of directors, the supervisory board, and the auditors. All these organs, with the exception of the auditors, are obligatory. Company statutes may provide also for other organs (e.g. managing director, director's board etc.), according to concrete needs.

At the general meetings, it is especially the will of the joint-stock company which is expressed. They serve for the purpose of exercise of those shareholders' rights which they cannot exercise separately but only together with the others.

These rights are exercised through voting at general meetings; every shareholder has as many votes as he owns shares, unless otherwise provided by the statutes (Articles 34, 35). The rights are defined in the law in its Art. 43. They concern mainly company affairs in connection with business deals, the right to inspect the balance sheet (annual financial statement), and decision-making on the division of profit. The general meetings are convened by the board of directors, but also by the supervisory board if the interest of the company requires it. The law recognizes the constituent general meeting (Art. 22 et seq.), the regular general meeting (at least once a year), and the extraordinary general meeting.

The board of directors is the so-called statutory organ of the company; it represents the company towards third persons originally, without a special authorization (Art. 50). The statutes, the general meeting or the supervisory board can limit, by their decision, the right of the board of directors to represent the company, but without effect towards third persons.

The general meeting also elects the supervisory board, when the company has at least 200 employees in annual average, one third of the members of the supervisory board are elected by the employees. Those persons who are members of the board of directors or are company employees must not be elected members of the supervisory board at the general meeting. The main function of the supervisory board is to overlook the management of the company, for which it has a number of rights listed in Articles 56–59.

The general meeting elects an auditor who may be not employee of the company (Art. 61).

In view of the fact that the law permits the existence of a one man company, this sole shareholder exercises the rights of the general meeting (Articles 62, 63).

Increasing and decreasing capital stock is also provided for by the law. Capital stock can be increased under the condition that the aggregate of the nominal values of previously issued shares has been fully paid up, with the exception of cases that capital stock is to be increased by non-monetary investments (Art. 67). The increase must be decided by the general meeting by amending the appropriate part of the company statutes. The increase (change of statutes) has to be reported to the registry court within thirty (30) days from the decision to increase the capital stock. The increase of the capital stock becomes effective on the day on which the registry office makes an entry in the companies register.

The law permits several ways of increasing capital stock, including a conditional increase if the purpose of the decision is to issue convertible bonds. New shares can then be issued only to the extent to which the owners of bonds exercise their right to their exchange for shares.

Also decresing capital stock requires a change in the statutes, with the exception of the so-called gradual redemption of shares (Art. 80). The decrease must be made public at least twice, and the company's creditors have the right to ask for ensuring their claims. The decrease takes effect on the date it is entered in the companies register.

The law prescribed the way to decrease capital stock by withdrawing shares from circulation, by redeeming the shares presented by shareholders on call, or drawn shares. The rules for drawing the shares destined for withdrawing from circulation are determined by the general meeting.

The law regards as a decrease of capital stock also gradual redemption of shares in cases that the existence of the company is limited to a certain period of time, because capital stock is completely expended in the course of time, or rests in rights limited in time. In Art. 80, the law requires that the owners whose shares have been withdrawn from circulation be issued redeemed shares attesting to their rights pertaining to the drawn shares. Owners of these documents retain their shareholder's rights to the full extent, including the right to dividends; a provision is that the owners of the shares not drawn have priority in the distribution of dividends and the claim to a share of the liquidation proceeds

when the company is dissolved. The statutes may provide for the payment of "superdividends", i.e. that part of the net profit which remains after the payment of dividends.

The statutes may provide that instead of gradual drawing and redemption of shares, an "amortization fund" is created from the net profit, and that after the expiry of the time of its existence, the company will redeem all the shares at once.

The law requires a reserve fund to be created as the only obligatory fund of the company. The way of creating it and its amount are prescribed in the statutes. The law requires in Art. 84 that the fund be at least ten (10) per cent of the capital stock, and that five (5) per cent of the annual net profit (after taxes) be paid into it until the fixed amount is reached.

In view of the fact that the reserve fund does not have to be created at the time of the establishment of the joint-stock company, shares with agio for the reserve fund need not be subscribed when the company is founded. The law requires, however, that at the time of the establishment of the company, shares be not sold under par, but a pari or above par. The sums obtained by above par sales can be used for the creation of the reserve fund. The use of the reserve fund is determined by the general meeting, but the fund must never drop under the minimum amount.

The law has abandoned dissolution of joint-stock companies by decisions of state organs, so that companies are dissolved by resolutions of general meetings, by achieving the purpose for which they have been founded, or after the expiry of the period of time for which they have been founded. The company then becomes extinct, after winding up procedures, on the day it is struck off the companies register. Winding up procedures are necessary always, because the law insists on settling affairs of the company, which can be done virtually only by winding up proceedings (Art. 86).

The Czechoslovak legal code does not yet have regulations on compoundig and bankruptcy proceedings, so that for liquidation of companies for insolvency, regulations of the code of civil procedure are used (Articles 352–354 of Law No. 99/1963). Not even in such cases are companies dissolved by a ruling of a state organ (e.g. court of bankruptcy), but by the decision of the last general meeting which approves the financial statement as of the date of the liquidation, and decides on the distribution of the liquidation proceeds among shareholders.

The law has no provissions for the status of trade union organizations in joint-stock companies, for which special regulations exist. Substantial changes have taken place in the status and domain of trade unions in Czechoslovakia which have not yet been defined in legal provisions. A number of independent branch trade union organizations have come into existence which have their primary organizations and works committees in enterprises. The relationship between trade union organizations and employers is regulated above all by the collective contract. At a later time, it can be expected that some of the functions of trade

union organs will be defined by laws.

In its final provisions, the law declares the joint-stock companies established according to previous regulations (Law No. 243/1949) as companies founded according to the new law. The existing joint-stock companies do not have to be established anew, only their statutes must be amended within six months so as to be in keeping with the new law. This will mean, as a rule, deletion of provisions concerning the state licence for the establishment of companies and state supervision in them, and possibly also changes of provisions concerning the organs of joint-stock companies, etc.

The Joint-stock Companies Act

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

Part I
GENERAL PROVISIONS

Article 1

Joint-stock company

(1) The joint-stock company (hereinafter only company) shall be a juristic person for entrepreneurial activities whose capital stock is divided into a certain number of shares, the nominal value of which is determined in advance.

(2) The company shall be the owner of financial means paid and goods made available to it by its shareholders, as well as of property acquired during its business activity.

(3) The designation joint-stock company or the abbreviation "a s" shall be included in the commercial name of the company.

Article 2

(1) The company shall be capable of acquiring rights and assuming obligations. It stands for the breach of its commitments and other obligations with its assets. The shareholder is not liable for the obligations of the company.

(2) For the purpose of this Act, also the owner of the interim certificate is deemed to be a shareholder.

Article 3

Shares

(1) A share is a security giving the shareholder the right to participate, according to this Act and the statutes of the company, in its management, its profits and the remainder of its assets when the company becomes extinct.

(2) Unless provided otherwise in this Act or in the statutes of the company, the company issues shares guaranteeing the same rights to the owners of the same number and the same kind of shares.

(3) if several kinds of shares are issued, the rights pertaining to the various kinds of shares shall be defined in the statutes. Shares of the same kind shall have the same nominal value.

Article 4

(1) The shares can be either shares registered in the name of the shareholder, or bearer shares.

(2) For registered shares, the company keeps a list of shareholders, with the commercial designation (name) of the shareholder, and his seat (domicile). Upon request of the shareholder, the company shall provide him with an abstract from the list of shareholders, in the part concerning him. Unless provided otherwise in the statutes, registered shares can be transferred by an endorsement stating the commercial designation (name) and the seat (domicile) of the new holder as well as the date of effectiveness of the transfer. To transfers by endorsement, provisions of the Bills and Cheques Act otherwise apply.[1]

(3) Bearer shares are freely transferable by their handing over, and the holder shall have the rights ensuing from them.

(4) Recording the transfer of registered shares in the list of shareholders is necessary to make the transfer valid.

Article 5

The nominal value of one share shall be at least 1,000 Czechoslovak crowns, or a multiple of this sum divisible by 1,000. Shares issued in a lower nominal value are invalid.

Article 6

The text of the share shall contain at least the following:

a) the name and the seat of the company;

b) the serial number and the nominal value of the share, designation whether it is a registered share or a bearer share, and the name of the owner if it is a registered share;

c) the kind of share, and the rights pertaining to this kind of share according to the statutes;

d) the date of issue, the amount of the capital stock of the company, and the number of shares of this kind at the time of issue;

e) signatures of two members of the board of directors authorized to sign on behalf of the company.

Article 7

(1) Shares issued prior to the valid registration of the company in the register of companies and before they are fully paid up are invalid.

(2) Prior to the valid registration of the company in the register of companies, or prior to the complete payment for the share, the founders can issue interim certificates attesting to subscribed deposits in money or other property values, and to the extent of their payment.

3) The interim certificate is a security granting the shareholder full rights. It must be issued in his name, and only after the valid registration of the company in the register and full payment of the value of the share can it be exchanged for a share of nominal value, either a share registered in name or a bearer share.

(4) The issuers of the share or of the interim certificate shall be jointly and severally liable for damage caused by an infraction of this provision.

Article 8

(1) The company statutes can provide for the issue of shares giving priority right to a share of the profit (priority shares). The statutes may reduce or void the voting right pertaining to priority shares.

(2) The statutes determine the rules concerning the exercise of the priority right to a share of the profit.

(3) The statutes can also permit the issue of another kind of priority shares.

(4) Priority shares of any kind can be issued only up to one half of the capital stock of the company.

Article 9

(1) The statutes can provide for the issue of staff shares, sold at an advantageous price.

2) Staff shares are issued in name, and are transferable only among the employees and retired employees of the company; the provisions concerning the transfer of registered shares must be observed.

(3) In the event of death or end of employment, with the exception of retirement, the rights ensuing from the staff shares cease, and the share concerned must be returned to the company. Unless provided otherwise in the statutes, the company shall pay the market price for the share, if quoted, otherwise its nominal value.

(4) The statutes or the general meeting determine in detail the conditions for acquisition and transfer of these shares. Otherwise, the owners of staff shares have the same rights as the other shareholders.

Article 10

(1) According to the statutes, shares can also be issued on which a previously fixed interest is paid (interest shares): their aggregate value must not exceed ten (10) per cent of the capital stock.

(2) The owners of interest shares are entitled to interest from the nominal value of the shares according to the interest rate inscribed on the share, even if the company makes no profit in the year concerned.

(3) The owners of interest shares are entitled also, besides interest, to a dividend in excess of the interest.

Article 11

(1) The statutes can specify that the company can, up to an amount equal to half of the capital stock, issue a certificate to a person who pays an agreed sum to the company. The certificate entitles him to ask, after a certain time, for the return of the sum paid, plus interest stated in the certificate, or to ask for a share, or option to buy this share.

(2) The certificate referred to in paragraph 1 may give the holder the right of lien to the property of the company or priority right to satisfaction of claims

against the company before other creditors.

(3) The certificate can be issued in name or for holder.

(4) The issue of these certificates does not increase the capital stock and does not involve any shareholder's rights.

Article 12

(1) The company can acquire, for its assets in excess of the capital stock, the shares it has issued and are fully paid for.

(2) The aggregate nominal value of these shares which the company acquires as its property must not exceed one-third of the capital stock.

(3) Unless otherwise provided by this Act, the company must not exercise shareholder's rights on the basis of these shares and has to sell them within three years.

Article 13

(1) The company can also take out of circulation the shares it has acquired according to Article 12 , paragraph 1.

(2) Registered shares taken out of circulation must be struck off the list of shareholders: shares taken out of circulation, both registered and bearer shares, must be destroyed.

(3) The taking of shares out of circulation shall be reported by the company to the registry office within 30 days, for the purpose of this being entered in the register of companies.

Article 14

(1) A registered share can have several owners who act vis-à-vis the company as one shareholder; they can exercise their rights only through their common representative.

(2) When a share is owned jointly by two or more persons, also the name of the common representative shall be entered in the list of shareholders.

Part II
ESTABLISHMENT OF A JOINT-STOCK COMPANY

Article 15

Founder

The founder of a company can be the state, a juristic person or a natural person. A company may also be established by one founder.

Article 16

Capital stock

(1) The capital stock of a company shall not be smaller than 100,000 Cz. crowns.

(2) The total of the financial contributions paid in at the time of the establishment of the company shall not be less than thirty (30) per cent of the capital stock, and shall be at least 50,000 Cz. crowns.

Article 17

Subscription of shares

(1) The founders create the capital stock by subscribing shares.

(2) Shares are subscribed on the basis of the establishment contract or, when there is one founder, according to the establishment plan. Duplicates or copies of the establishment contract must be notarially verified.

(3) The establishment contract or the establishment plan shall include:

a) the commercial designation, the seat, sphere of entrepreneurial activities and the period of existence of the company;

b) the proposed amount of the capital stock and the minimum shares of the founders in the capital stock;

c) the number and nominal values of the shares; if shares of several kinds are to be issued, their designation and description of the rights pertaining to them;

d) the place and the dates of the first and last subscription of shares;

e) In case that a part of the capital stock is to be a non-monetary contribution, its nature and value, the commercial designation (name) and seat (domicile) of the investor of the non-monetary contribution, and the name of the sworn expert who has made a preliminary assessment of the contribution:

f) the way of convening the constituent general meeting of the shareholders.

4) The terms of subscription of the capital stock shall be made public in a suitable way.

Article 18

In the establishment contract or the establishment plan, the value of the non monetary investment can be given as not higher than the preliminary value determined by the sworn expert.

Article 19

(1) The subscription of shares shall be carried out by the signing of the list of subscribers; the subscription can be executed by a statutory organ of the subscriber, personally, or through a representative.

(2) The subscribers, with the exception of those making non monetary investments, shall deposit at least ten (10) per cent of the subscribed sum into the bank account specified by the founder.

Article 20

(1) In case that more shares are subscribed than the founders propose to issue (higher subscription), the founder can reject the subscription in excess of the

proposed number of shares. If he does not do so, the constituent general meeting decides whether to accept or reject the excess subscription in determining definitively the amount of the capital stock.

(2) When the founders or the constituent general meeting reject higher subscription, the rejected subscriber shall receive back the sum he has paid in, without deductions, within 15 days of the date of the rejection. The founders are responsible jointly and severally for the fulfilment of this obligation.

Article 21

(1) Establishment of a company shall be unsuccessful if by the last date set for the subscription of shares, shares amounting to the proposed capital stock have not been subscribed.

(2) In case of failure to establish a company, payments made by the subscribers shall be returned to them within 15 days, without deductions. The founders are jointly and severally responsible for the fulfilment of this obligation.

Article 22

Constituent general meeting

(1) The founders shall invite the subscribers to the constituent general meeting which must be held within sixty days from the date of the last successful subscription of shares.

(2) When the founders fail to meet the deadline for convening the constituent general meeting according to paragraph 1, the subscribers shall be relieved of their obligation and can ask for the return of the sums they have paid. The founders shall be jointly and severally responsible for the return of the payments made, without deductions.

(3) By the date of the constituent general meeting, the subscribers shall increase the sums paid in in making the subscription to thirty (30) per cent of the nominal value of the shares subscribed. This provision does not apply to those making a non monetary investment.

Article 23

The constituent general meeting shall:

a) note that the capital stock has been subscribed and that at least thirty (30) per cent of it has been paid, but a minimum of 50,000 Cz. crowns;

b) accept or reject a higher subscription of shares;

c) decide to establish the company;

d) approve the statutes of the company;

e) determine the advantages of the founders and confirm possible separate agreements concluded in the course of the establishment of the company with the founders or with other persons, if these are to have effect for the company;

f) determine the value of non-monetary investments (contributions) and the

deadline by which they are to be made;

g) elect for the first year a board of directors and a supervisory board, with the exception of the case that this right has been reserved by the founders in the establishment contract:

h) elect the company's auditors.

Article 24

(1) The constituent general meeting is capable of passing resolutions if subscribers who have subscribed at least half of the capital stock are present

(2) For decisions of the constituent general meeting, a simple majority of the subscribed shares of the present subscribers is necessary. Decisions can deviate from the establishment contract or the establishment plan only if they are unanimous decisions of all the subscribers present. The constituent general meeting shall not set a higher value of non-monetary investments than the value given in the establishment contract or the value set by a sworn expert, and must not change the advantages to which the founders are entitled.

(3) When decisions are made on non-monetary investments and on the advantages of the founders, the subscribers concerned cannot vote.

(4) A notarial record shall be made of the constituent general meeting [2]

Article 25

Single-action establishment of a company

(1) When the founders agree in the establishment contract that they themselves will pay in the entire capital stock in an agreed ratio, subscription of shares and a constituent general meeting shall be unnecessary.

(2) In case of single-action establishment of a company, the founders agree on the appointment of the members of the board of directors, the supervisory board and the company statutes.

(3) In matters for which no provisions exist in paragraphs 1 and 2, general provisions on the establishment of companies apply appropriately.

(4) The provisions of paragraphs 2 and 3 are appropriately valid also in case that the exclusive founder of the company is a juristic person who will pay in the entire capital stock.

Article 26

Statutes

(1) The statutes shall determine

a) the commercial name and the seat of the company;

b) the period of its existence;

c) the sphere of entrepreneurial activity;

d) the amount of the capital stock and the conditions for paying up shares;

e) the number and the nominal value of the shares, as well as the kind of the shares issued (registered or bearer shares);

f) way of entering the company in the register of companies,

g) way of convening general meetings, procedures in cases that the general meeting constitutes or lacks a quorum, of conditions for and ways of exercising the voting right of the shareholders;

h) the number of the members of the board of directors, the supervisory board and the number of auditors, the way of electing them, definition of their powers and periods of function;

i) principles for drawing up balance sheets and rules for dividing the profits of the company;

j) ways of making public the facts prescribed by law or the company statutes;

k) consequences of infraction of the obligation to pay up the subscribed shares in time;

l) the amount and the use of the reserve fund.

(2) When necessary, the statutes shall make provisions especially for

a) cases that various kinds of shares are issued: their designation, number, nominal values and the rights pertaining to them;

b) the rules according to which certificates (under Art. 11) can be issued;

c) possibilities of taking shares out of circulation, including the procedure that must be adhered to;

d) the extent of the powers of the board of directors in cases of increasing the capital stock (Art. 69).

Article 27

Registration of a company in the register of companies

(1) The company comes into existence on the day of its registration in the register of companies. The application for registration shall be signed by all members of the board of directors.

(2) The registry office carries out the registration only provided that:

a) the constituent general meeting has been held, if it is prescribed;

b) the subscribers have subscribed the entire capital stock;

c) at least thirty 30) per cent of the capital stock has been paid up;

d) the approved statutes and a notarial record of the constituent general meeting have been submitted;[2)]

e) an identification number has been assigned by the state statistical authority.

(3) When a permit according to special regulations is necessary for the economic activity in which the company is to be engaged, or for the establishment of the company the registry office shall carry out the registration only if this permit has been submitted.

Part III
OBLIGATIONS AND RIGHTS OF THE SHAREHOLDERS

Article 28

The shareholder shall pay to the company the full value of his shares within one year from the registration of the company in the register of companies. In this period, he shall pay the value of the shares in instalments by dates specified in the articles.

Article 29

(1) When the shareholder delays in paying an instalment towards the value of his share, he shall pay interest of twenty (20) per cent a year of the amount the payment of which was overdue.

(2) When the shareholder fails to pay an instalment within sixty days of the call, the board of directors is entitled to declare his interim certificate invalid, and deprive him of shareholder's rights; at the same time, it may enable another person to subscribe the share concerned. From the sum thus obtained, the claims of the company are satisfied first, and the remainder is returned to the former shareholder.

Article 30

When the shareholder transfers his interim certificate to another person before he has paid up the whole nominal value of the share, he is responsible for the payment of the subscribed sum as guarantor.

Article 31

(1) The shareholder is entitled to a share of the profit which has been fixed for distribution (dividend) in accordance with his shares (interim certificates), on the basis of the annual financial statement, by the general meeting.

(2) In case of extinction of the company, the shareholder is entitled to a share of the assets which can be divided on completion of the winding up, in accordance with his shares (interim certificates).

(3) The provisions of the paragraphs have nothing to do with special rights of some stares according to the company's statutes.

(4) It is not permissible to meet the claims of the shareholder at the cost of the capital stock, with the exception of a decrease of the capital stock.

Article 32

(1) In the period of existence of the company, nor in case of its extinction, the shareholder cannot ask for the return of his property investment.

(2) The shareholder is not obligated to return the dividends received in good faith.

Article 33

(1) Every shareholder is entitled to attend general meetings, ask for explana

Part IV
ORGANIZATION OF THE JOINT-STOCK COMPANY

Article 42

General meeting

The general meeting is the highest organ of the company, all shareholders are entitled to take part in its deliberations.

Article 43

The general meeting shall have the exclusive power to

a) approve and amend the statutes;

b) increase and decrease the capital stock;

c) change the rights pertaining to the various kinds of shares;

d) make the decision on the extinction of the company;

e) elect and recall members of the board of directors, the supervisory board, and auditors, and determine bonuses for them;

f) approve the annual financial statement and the distribution of the annual profit;

g) make decisions concerning the issuing of convertible or priority certificates according to Article 11;

h) make decisions on all matters which this Act or the company statutes entrust to the exclusive competence of the general meeting.

Article 44

(1) General meetings shall be convened in periods specified in the statutes, but at least once a year. In necessary cases, a general meeting can be convened at any time.

(2) The general meeting shall be convened by the board of directors, unless otherwise provided by this Act.

(3) The general meeting shall be convened in the way prescribed by the statutes at least 30 days in advance. The invitation shall include:

a) the name and seat of the company;

b) the date and venue of the general meeting;

c) the agenda of the general meeting;

d) the conditions of the statutes and the exercise of the voting right.

(4) When bearer shares have been issued, the company shall announce the convening of the general meeting in a suitable way, within a period specified in paragraph 3.

Article 45

(1) The shareholders present at the general meeting sign their names in an attendance list which shall contain the commercial designation (name) of the shareholder or his representative, his seat (domicile), the numbers of his shares

and the number of the votes he has according to the shares.

(2) The validity of the attendance list shall be confirmed by the signatures of the chairman of the general meeting and the minutes clerk.

Article 46

(1) The general meeting is capable of transacting business if attended by shareholders owning more than a half of the shares entitling them to vote.

(2) When the general meeting lacks a quorum, the second general meeting shall be convened within 15 days, with the unchanged agenda: it is capable of transacting business regardless of the number of persons present.

(3) Matters which have not been included in the published agenda can be decided only when all shareholders are present and agree unanimously that the matter can be considered.

Article 47

The general meeting makes decisions on matters referred to in Article 43, a) through d), at least by a majority of two-thirds of valid votes; on other matters, unless the statutes prescribe a qualified majority, the general meeting makes decisions by a simple majority of votes.

Article 48

The decisions of the general meeting which change the rights pertaining to some kind of shares in their disfavour shall be valid when at least a three-fourths majority of shareholders representing the kind of shares concerned agree with the decision in a way prescribed by the statutes: when the procedure is not prescribed, provisions concerning the general meeting shall be applied appropriately.

Article 49

(1) The general meeting shall at first elect its chairman, a minutes clerk, two persons to verify the minutes, and persons to count the votes.

(2) The minutes of the general meeting shall contain:

a) the name and seat of the company;

b) the venue and date of the general meeting;

c) the name of the chairman of the general meeting, the names of the minutes clerk, persons verifying the correctness of the minutes (verifiers), and the names of the vote counters;

d) the more important events in the proceedings and the statements made at the general meeting. Submissions made in writing and statements shall supplement the minutes;

e) the decisions of the general meeting, stating the number of votes in favour, against and abstentions;

f) protests lodged by shareholders, members of the board of directors or the supervisory board, against some decision, when the persons lodging the protest request this.

(3) The minutes shall be signed by the minutes clerk and the chairman of the general meeting, and their correctness shall be confirmed by two verifiers.

(4) The board of directors shall have the minutes completed within thirty days after the general meeting. Together with the announcement of the convening of the general meeting and the attendance list, the minutes shall be kept in the archives of the company for the whole time of its existence.

(5) Any shareholder can ask the board of directors for an excerpt from the minutes, or for a copy of the minutes of the general meeting.

Article 50

The board of directors

(1) The board of directors shall be elected by the general meeting from among the shareholders or other persons. The general meeting can also decide that as long as the number of the members of the board of directors does not fall to a half, the board of directors completes the number by cooptation. The subsequent general meeting shall either confirm the coopted members of the board of directors, or elect new ones.

(2) The board of directors shall have at least three and not more than eleven members. The chairman of the board shall be elected by its members.

(3) The board of directors is a statutory body of the company. It represents the company towards third persons, and before courts and other authorities; it creates and directs the organization of the work of the company and exercises employer's rights.

(4) The way in which the members of the board of directors represent the company shall be determined by the statutes, and recorded in the register of companies.

Article 51

The statutes, decisions of the general meeting or the supervisory board may limit the right of the board of directors to represent the company; this limitation, however, shall be ineffective in relation to third persons. The members of the board of directors are liable jointly and severally for damage caused by their acting beyond the extent of their powers.

Article 52

(1) The board of directors shall be responsible for the drawing up of the annual financial statement and of a proposal for the distribution of profits.

(2) The board of directors prepares a report on the business activities of the company, on the state of its assets and on its commercial policy for the general meeting, in periods specified by the statutes, but at least once a year.

(3) The board of directors ensures that accounts and the business books of the company are properly kept.

Article 53

The board of directors shall convene a general meeting and notify the supervisory board when it has ascertained that

a) the company has lost one-third of its capital stock, or that

b) the company has been insolvent for a period longer than three months.

Article 54

(1) The member of the board of directors shall not

a) make business deals in his own name, within the operations of the company,

b) be a member of unlimited liability of another company operating in a similar sphere of business;

c) be a senior officer of another company operating in a similar sphere of business.

(2) When a member of the board of directors breaches one of the prohibitions in paragraph 1, the company

a) may claim damages;

b) instead of damages, may demand that the member of the board of directors let the company have the business deal he has made for himself;

c) that he let the company have his benefits from the business deal, or transfer to the company his claims from it.

(3) The claim of the company according to paragraph 2 expires within three months from the day on which the other members of the board of directors learned of the fact, but at the latest a year after the claim has arisen.

Article 55

The supervisory board

(1) Every company shall set up a supervisory board which shall have at least three members.

(2) The members of the supervisory board shall be elected by the general meeting from among the shareholders or other persons. The general meeting shall not elect a company employee as a member of the supervisory board.

(3) When the number of the company employees exceeds 200 in annual average, in full-time jobs, one-third of the members of the supervisory board shall be elected by an assembly of the company employees from their ranks.

Article 56

(1) The supervisory board is entitled to check on action taken in matters of company business, to inspect accounting documents and company books at any time, and to ascertain the state of the company.

(2) The supervisory board shall review the annual financial statement, the

balance sheets and proposals for the distribution of profits, and shall submit to the general meetings every year reports on the results of the review.

Article 57

(1) The members of the supervisory board shall attend the general meetings of the company; they can make submissions concerning the agenda of general meetings.

(2) In case that in the supervisory board, opinions of the representatives of the employees differ from those of the other members of the supervisory board, also this minority opinion shall be communicated.

Article 58

(1) The supervisory board shall convene a general meeting whenever the interest of the company requires it.

(2) In litigation initiated against the board of directors or against its members, the company shall be represented by the supervisory board.

Article 59

(1) The supervisory board shall exercise its powers jointly or through its individual members. Inspection work can also be divided by the supervisory board permanently between its members. The distribution of inspection activity does not affect the responsibilities of the members of the supervisory board, nor their right to perform other inspection functions.

(2) When an inspection organ exists in the company, it shall be subordinated to the supervisory board.

Article 60

The provisions of Article 54 apply also to the members of the supervisory board.

Article 61

Auditors

(1) Every company shall elect at least one person to audit the company books. The auditor shall be elected by the general meeting from among the shareholders or other persons.

(2) The auditor shall perform tasks assigned to him by this Act, other legal regulations, the company statutes and the general meeting.

Article 62

A single-person joint-stock company

(1) A company can be established also in the way that a juristic person is the only shareholder.

(2) A single-person company is established also when one shareholder has acquired the ownership rights to all shares.

Article 63

For single-person companies, the provisions of this Act shall apply, with the proviso that the rights of the general meeting, according to Article 62, paragraph 1, shall be exercised by the founder, and in cases according to paragraph 2 by the shareholder.

Part V
INCREASING AND DECREASING THE CAPITAL STOCK

Article 64

Increasing the capital stock

(1) The company shall be able to increase the capital stock only when the shareholders have fully paid the total of the nominal values of previously issued shares, with the exception of the case specified in Article 68.

(2) The capital stock can be increased by the subscription of new shares, by the transformation of the assets of the company in excess of the capital stock into capital stock, or by the exchange of certificates according to Article 11 for shares.

Article 65

(1) The decision to increase the capital stock shall be made by the general meeting at the proposal of the board of directors. The announcements of the convening of the general meeting shall include, in addition to data listed in Article 44, paragraph 3, also the following:

a) reasons for increasing the capital stock, the way of increasing it, and the lowest value of the increase;

b) proposed changes in the articles concerning the increase of the capital stock;

c) the number and nominal value of the new shares;

d) when a new kind of shares is to be issued, the rights pertaining to them, as well as the decision which rights of the previously issued shares will be affected, and in which way;

e) when the capital stock is to be increased by the subscription of shares, the dates of the first and last subscription;

f) when the capital stock is to be increased by non-monetary investments, the proposed value of the investments.

(2) The capital stock increase shall be carried out by the board of directors.

Article 66

(1) When the capital stock is to be increased by the subscription of shares,

a) for every share, an amount shall be paid as determined by the general meeting, but at least thirty (30) per cent of its nominal value,

b) by a three-fourths majority of votes of the shares entitling owners to vote,

the general meeting can give every shareholder first option to buy the new shares, and fix the date by which shareholders can exercise this right.

(2) Owners of certificates according to Article 11 can exercise their right to exchange their certificates for shares, before shareholders.

(3) For the subscription of shares to increase the capital stock, the provisions of this Act concerning the establishment of a company shall apply, with the proviso that the subscription of shares can be started only after the decision of the general meeting to increase the capital stock has been entered in the register of companies.

Article 67

When capital stock is to be increased partly or wholly by non-monetary investments, the company can increase its capital stock by their value also when the aggregate nominal value of previously issued shares has not been fully paid up.

(2) Provisions of this Act concerning the establishment of a company shall be appropriately applied for determining the value of non-monetary investments and for the responsibility in connection with this.

Article 68

(1) The company shall be able, after the approval of the annual or special financial statement, to transfer a part of its assets in excess of the capital stock into the capital stock by issuing new shares, or by increasing the nominal values of the various shares previously issued.

(2) Unless the general meeting decides otherwise, the newly issued shares shall be offered first to the shareholders. The offer shall be made in the way prescribed by the statutes.

(3) When the shareholder does not take possession of the new shares by the conclusion of the next general meeting, the company shall be able to sell freely the new shares.

(4) The nominal value of shares shall be increased by their being exchanged for new shares of a higher nominal value, or the higher nominal value shall be inscribed on the previously issued shares, with signatures of two members of the board of directors, with authority to sign on behalf of the company.

Article 69

The statutes can authorize the board of directors to issue, under conditions spelled out by the statutes new shares, or transfer the assets in excess of the capital stock into the capital stock, to increase the capital stock to a fixed value, but not by more than one-third of the original capital stock.

Article 70

Conditional increasing of the capital stock

(1) The general meeting can decide to conditionally increase the capital stock if the purpose of the decision is to issue certificates according to Article 11.

(2) Owners of certificates according to Article 11 can apply for shares against the conditionally increased capital stock. The applications shall be made in writing, and state the number and nominal values of the requested shares.

(3) The board of directors can issue shares according to paragraph 2 only to the extent to which entitled owners exercise their right for the exchange of their certificates for shares, and after the full value of the shares has been paid.

(4) In cases that the certificates according to Article 11 have been issued for a lower amount than the nominal value of the shares, it shall be possible to issue new shares only if the entitled owners have paid to the company the difference between the nominal value of the share and the value of the certificate. Shareholder's rights originate after the issue of the new shares.

Article 71

(1) The board of directors shall notify the registry office of the decision of the general meeting to increase the capital stock within thirty days from the date of the decision. The same shall be done after the increasing of the capital stock, or in the event that the increase has not been carried out.

(2) In the case of conditional increasing of the capital stock, the board of directors shall notify the registry office of the increase of the capital stock through the conditionally increased capital in the previous year, within thirty days after the approval of the annual financial statement.

(3) The increase of the capital stock becomes effective on the day on which the registry office makes an entry in the register of companies. Provisions concerning the establishment of companies shall be appropriately applied for making an entry in the register of companies.

(4) Shares or interim certificates shall be issued only after the entry has been made.

Article 72

(1) The new shares issued on the basis of the increased capital stock according to the articles or a decision of the general meeting shall participate in the profit made in the year in which the capital stock has been increased.

(2) The shares which are owned by the company shall participate in the increase of the capital stock according to the rules valid for the other shares.

Article 73

Decreasing the capital stock

(1) The decision of the general meeting to decrease the capital stock shall contain the reason for decreasing the capital stock, the way it is to be done, the

value by which the capital stock is to be decreased, and the deadline by which the shares are to be presented to the company.

(2) For the purpose of decreasing the capital stock, above all those shares which are owned by the company shall be withdrawn from circulation.

(3) In decreasing the capital stock, the provisions shall be observed which concern the lowest value of the capital stock: the decrease shall not affect the rights of the owners of certificates according to Article 11.

Article 74

(1) The board of directors shall notify the registry office of the decision of the general meeting to decrease the capital stock within thirty days after the decision has been made.

(2) After the entry has been made in the register of companies, the board of directors shall make this decision public in a suitable way, twice, with an interval of at least thirty days.

Article 75

(1) The creditors whose claims against the company originated before the first publication of the decision to decrease the capital stock, can ask the company for surety up to the amount of their claims, within ninety days after the last publication of the decision to decrease the capital stock. Failure to meet this deadline constitutes expiry of the right of the creditors to this surety.

(2) The company shall provide the appropriate surety to the creditors applying for it according to paragraph 1.

Article 76

(1) The capital stock shall be decreased by a reduction of the number of shares, or by lowering the nominal value of individual shares, or by simultaneous reduction of the number of shares and of their nominal value, or by giving a larger number of shares the value of a lower number of shares.

(2) The number of the issued shares shall be reduced by withdrawing a certain number of shares from circulation (calling in shares) and by buying back the shares presented in response to the call, or drawn shares. The general meeting shall determine detailed rules for a draw to withdraw shares from circulation.

(3) The nominal value of the shares shall be reduced by their exchange for new shares of a lower nominal value, or by inscribing on them lower nominal values, with signatures of two members of the board of directors authorized to sign on behalf of the company.

(4) A certain number of shares can also be exchanged for one with the full previous nominal value.

Article 77

(1) The general meeting can decide to decrease the capital stock also when it has not yet been fully paid up.

(2) In such a case, the general meeting shall decide that further part payments

for shares will not be made, and that the issued interim certificates will be exchanged for shares of the appropriate nominal value, or that the company will desist from issuing a further number of shares which were to have been issued according to the statutes.

Article 78

(1) The board of directors shall publish, in a way prescribed in the statutes, a call on the shareholders to present, within a specified time, their shares for the purpose of exchange, inscription of their lower nominal value, withdrawal from circulation, or for the purpose of exchanging more shares for one.

(2) The company shall declare as invalid the shares that have not been presented in response to the call. The declaration of such shares as invalid shall be made public by the company in a suitable way.

(3) In substitution for the shares declared as invalid, the company can issue new shares which it can sell. The sums obtained from the sale shall be paid to the shareholders whose shares have been declared invalid, or shall be deposited until a time when it is ascertained that it is justified to make the payment.

Article 79

(1) After 90 days from the last publication according to Article 74, paragraph 2, the registry office, upon request of the company, shall make an entry on the decrease of the capital stock in the register of companies. The decrease of the capital stock takes effect on being entered in the register of companies.

(2) The entry can be made provided that

a) the decision of the general meeting to decrease the capital stock has been made public twice;

b) surety has been provided according to Article 75, or that the creditors have been satisfied.

(3) Payments to shareholders debited to the capital stock or waiver of outstanding payments for shares shall be permissible only after the decrease of the capital stock has been recorded in the register of companies.

Article 80

Progressive redeeming of shares

(1) When the existence of the company is limited to a certain period because the capital stock will be completely expended in the course of time, or rests on rights limited in time, the statutes of the company shall contain provisions for redeeming progressively, during the existence of the company, all shares of the shareholders from the net profit.

(2) The progressive redeeming of the shares shall be carried out by the withdrawal of the drawn shares from circulation: their owners shall receive, in addition to the nominal value of their shares, certificates attesting the rights pertaining to the drawn shares (usufruct documents).

Article 81

(1) For the owners of shares which have not been drawn, the articles shall reserve a certain part of the net profit for dividends which shall be divided only among them. In the event of the winding up of the company, they shall have also priority right to a share of the liquidation proceeds, corresponding to the nominal value of their shares.

(2) The company shall not be dissolved by the drawing of all shares but only by a decision made at a general meeting of the owners of usufruct documents.

Article 82

(1) For the drawn shares, certificates can be also issued guaranteeing their owners the right to a part of the net profit which will remain after the payment of the dividend (superdividend) and to the surplus liquidation proceeds (creditors' usufruct documents).

(2) In the case referred to in paragraph 1, the company shall be dissolved by the complete drawing of all shares.

Article 83

(1) Instead of progressive drawing and redeeming of shares, or progressive buying up of shares, the company can create a fund from the net profit from which, at the end of the period of its existence, it would redeem all shares at once.

(2) When this fund is used to redeem the shares, all prescriptions for decreasing the capital stock must be observed.

Part VI
THE RESERVE FUND

Article 84

After its establishment, the company shall create its obligatory reserve fund, the size of which and the way it is created are prescribed in the statutes. This fund shall be augmented annually from profits after payment of all taxes, by not less than five (5) per cent of them, up to the amount also specified in the statutes. The minimum amount of the obligatory reserve fund shall be ten (10) per cent of the capital stock.

Part VII
EXTINCTION OF JOINT-STOCK COMPANIES

Article 85

(1) The extinction of the company requires

a) resolution of the general meeting on the extinction of the company in accordance with the statutes, or

b) achievement of the objectives of the company, if stated in the statutes, or expiration of the period for which the company has been established.

(2) The company shall cease to exist after winding up by its being struck off the register of companies.

Article 86

Winding up the company

(1) The function of the liquidator shall be performed by the board of directors or a person approved by the general meeting at the proposal of the board of directors.

(2) The shareholders representing at least one-tenth of the capital stock may ask the registry office, stating the reasons, to appoint another person as the liquidator. The statutes may grant this right also to shareholders representing a smaller share of the capital stock.

(3) The winding up of the company and the liquidator shall be entered, at the proposal of the board of directors, in the register of companies, and the words "being wound up" or "in liquidation" are added to the name of the company. After the winding up or liquidation of the company has been entered in the register of companies, the functions of the company organs shall be limited to those necessary to carry out the winding up.

(4) The liquidator shall notify all persons and organs concerned that the company has started winding up or liquidation proceedings. The final financial statement and other accounting reports shall be drawn up as of the date on which the winding up proceedings have been started.

(5) In the course of the winding up proceedings, the liquidator shall

a) concentrate all financial means with one banking institution;

b) complete and finalize the current business;

c) make all payments, pay taxes and dues;

d) settle the obligations of the company and secure satisfaction of its claims;

e) sell the assets of the company in the most economical and speedy way;

f) submit reports on the progress of the winding up, in accordance with the articles.

Article 87

(1) The liquidator shall draw up a financial statement upon completion of the winding up, and submit it to the general meeting together with the final report on the winding up, and a proposal for the distribution of the remainder of the company assets among the shareholders.

(2) After the approval of the closing financial statement and of the distribution of the remainder of the company assets, the liquidator shall

a) redeem the shares returned to him by the shareholders;

b) place all redeemed shares, company documents and books in safe custody;

c) request that the company be erased from the register of companies.

Article 88

Special regulations exist for the liquidation of companies that have become insolvent.[3]

Part VIII
FINAL PROVISIONS

Article 89

The legal status of trade union organizations active in the company is defined by special provisions.

Article 90

Companies established in accordance with legal provisions in force prior to this Act shall be deemed to have been established hereunder. If their statutes are at variance with this Act or do not contain provisions required by this Act, these companies shall change their statutes within six months after this Act has taken effect.

Article 91

The Government of the Czechoslovak Federative Republic may lay down rules for single-action establishment of companies and for changing state enterprises into companies, in which shares will be owned by the state or state enterprises.

Article 92

The Law No. 243/1949 on joint-stock companies is hereby repealed.

Article 93

This Act shall come into effect on May 1, 1990.

[1] Bills and Cheques Act, Law No. 191/1950
[2] Article 100 of the Law No. 95/1963, on state notaries and procedures before state notaries
[3] Article 352–354 of the Code of Civil Procedure, Law No. 99/1963, in the wording of subsequent provisions (full wording No. 78/1983)

APPENDIX 4 ENTERPRISE SPECIFIC TRANSACTIONS

SPECIFIC ACTIVITIES FOR THE REMAINDER OF PHASE I

The following list of activities was identified during the course of the interview process. The list is ordered in priority sequence. The work will be performed within the Phase I funding limits. Since there is insufficient time and funds remaining in the existing Delivery Order, we recommend working on only the first four activities identified below. If there are remaining resources, the additional work will be performed in the order of the listed priority of activities.

1. Technical Assistance to the Slovak Deputy Prime Minister
   Level of Effort: 50 person days

   Description. This effort involves advice on matters related to free-market policy reform. The assistance would concentrate on evaluation of existing policies, recommended modifications of these policies, and provide training assistance to the government on the principles of a free-market economy.

2. Ad hoc Technical Assistance to the SMOP
   Level of Effort: 30 person days

   Description. This effort involves on-call assistance in evaluating proposals with the primary emphasis on projects offered by foreign investors. Assistance would also be provided in evaluating competitive proposals.

3. Advice on Foreign Investment Promotion
   Level of Effort: 20 person days

   Description. This effort involves assistance in the evaluation of the current promotional activities across the Slovak Ministries with particular focus on the Agency for Foreign Investment. The activities will concentrate on supporting the current promotional activities, evaluating the use of "success fees" as a means of promoting foreign investment, and assisting in planning future promotional activities.

4. Advice on Prior Tender
   Level of Effort: 20 person days

   Description. This effort involves the preparation of an international tender document and promotion for 11 Prior stores. Additional time may be required to assist the Ministry of Commerce in the evaluation of acceptable bids.

5. Technical Assistance for ZVL Ball Bearing
Level of Effort: 75 person days

Description. This effort involves a strategic assessment of the enterprise in terms of management structure, financial management, investment strategies, and capital acquisition. The assistance will be provided to assist the enterprise in attracting foreign investors.

6. Assistance in Evaluating Competitive Construction Projects
Level of Effort: 40 person days

Description. This effort involves assistance to the Ministry of Construction in assessing five competitive projects in the concrete and related raw material industries. The results of this evaluation will be used as a prototype for the evaluation of further competitive projects.

7. Advice on Foreign Investor Negotiations
Level of Effort: 45 person days

Description. The effort involves the development of procedures and practices to be used by the SMOP when negotiating agreements with foreign investors. The assistance will also include practical examples of business plans and financial statements which are acceptable to the foreign investment community.

8. Advice on Slovair
Level of Effort: 50 days

Description. This effort involves the assessment of Slovair organization and financial structure with a concentration on divesting Slovair into several independent enterprises for privatization.

9. Advice on Pulp and Papermills
Level of Effort: 50 person days

Description. This effort involves the assessment of the organization, financial structure, marketing and environmental issues of selected pulp and papermills. The assistance will concentrate on the economic transformation of these enterprises given operational and market considerations, and social impacts.

10. Public Relations Campaign
Level of Effort: 30 person days

Description. This effort involves providing assistance to the SMOP in defining and designing a public relations campaign promoting the voucher sale of enterprises. The

design of the campaign should include the use of brochures, media spots and billboard promotions.

11. Advice on Land Use Strategy
Level of Effort: 60 person days

Description. This effort involves the development of a long term strategy for the reparation of land and forests. The assistance may involve an analysis of the forestry economy due to its importance at the national level. The assistance may also include financial strategies for lease back options and foreign investment.

12. Advice on Retail Store Investment Strategy
Level of Effort: 40 person days

Description. This effort involves an assessment of the retail store industry with emphasis on packaging these enterprises to attract foreign investors or joint venture partners.

13. Advice on the Automobile Transport Company
Level of Effort: 40 person days

Description. This effort involves the assessment of the public bus system with emphasis on divestiture of the company into several enterprises and packaging of the enterprises to attract foreign investment or joint venture partners.

14. Advice on Brick Factory
Level of Effort: 40 person days

Description. This effort requires a strategic assessment of the brick factory, for the Czech and Slovak American Enterprise Fund, concentrating on the operations, management, financing, investment strategy, marketing, and environmental considerations.

15. Develop Evaluation Procedures for the SMOP
Level of Effort: 20 person days

Description. This effort involves the development of the procedures for the consistent evaluation of projects reviewed by the SMOP. Assistance may also be provided to the founder Ministries to refine their evaluation procedures.

16. Develop procedures to Evaluate Competitive Projects
Level of Effort: 20 person days

Description. This effort involves the development of the procedures to allow the

Ministries to properly distinguish between competitive projects for the same enterprise.

17. Project Orientation Training
Level of Effort: 20 person days

Description. This effort involves the development of a training program for the initiators of projects to alert them to the requirements for the content and presentation of the project. The training would be a series of one day seminars presented to the broadest possible audience for projects to be in the Second Wave.

18. Advice on Filmco, Koliba
Level of Effort: 40 person days

Description. This effort involves a strategic assessment of the company, its organization and financial structure. The goal of this assistance is to help the company attract foreign investors.