Faculty of Graduate Studies in Law, McGill University, Montreal

Foreign Direct Investment in Bulgaria, Czechoslovakia and Hungary: A Comparative Study of the Current Legislation

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March, 1994

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements of the degree of Master of Laws (LL.M.)

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To my wife *Svetlana*

who has never stopped challenging me

TABLE OF CONTENTS

ABSTRACT

The author's goal is to illuminate the current business legislation in Central and Eastern Europe (CEE) through a comparison of three countries from the region, namely, Bulgaria, Czechoslovakia, and Hungary. For that purpose, the thesis does not focus on a particular case study, but aims at providing a comparative analysis of the relevant legal systems. This general approach is still expedient in terms of the continuously evolving legal environment in CEE.

Although the imperfections of the legal framework of foreign direct investment (FDI) are common for the entire region, the investment statistics point to a puzzling disparity of foreign capital participation in the surveyed economies. Inexplicably, Bulgaria remains of peripheral interest for western investors. And if anything is enigmatic about Bulgaria, it would be the foreign investors' reluctance to explore the opportunities available on the Bulgarian market.

It is hoping that this comparative study will assist the prospective investor and her/his advisor in their investment projects by providing some useful insight into the effective legislation in the aforementioned countries. On the other hand, the findings of the comparison are used for drawing some conclusions as to what makes foreign investment flow at a different rate in Bulgaria from that in Hungary and Czechoslovakia.

Within the guidelines just outlined, the present study is divided into four parts.

The first part states the thesis itself, the goals, and the structure of the discussion.

The second part provides the basic premises of the analysis, with emphasis on the current data on foreign investment in the three countries.

The third part presents the core of the comparative study and deals with the following issues: basic foreign investment laws, including corporate laws, property rights of foreign persons, currency regimes. Among other important aspects, attention is paid to the following subjects: general treatment of FDI, foreign investment in corporate capital, branches of transnational corporations, forms of FDI, special procedures for banking and insurance, closed sectors for FDI, financing of investment, incentives of FDI, domestic and international guarantees for FDI etc. The set of criteria used to assess the compared legislation focuses primarily on the essential features of

that legislation. This narrow approach is expedient in terms of the huge area that relates to foreign investment.

The final part uses the findings of the comparative study of the relevant legislation in order to determine the reasons for the lagging interest of foreign investors in Bulgaria. These reasons are found not to be due to any deep-seated differences in the pertinent legislation, but rather to some other factors, such as historical, socio-cultural, and geopolitical.

The law in the present work is stated as of 1 January 1994.

RÉSUMÉ

Le but de notre étude est de présenter la législation portant sur le commerce d'affaires en Europe de l'est et de l'Europe central, en faisant une comparaison entre la Bulgarie, la Tchécoslovaquie, et la Hongrie. Ce mémoire ne vise pas une étude de cas particulier. Elle vise plutôt une analyse comparative sommaire des systèmes juridiques.

Malgré les imperfections en ce qui concerne le cadre juridique de l'investissement directe à l'étranger (IDE), communs à toute la région, les statistiques nous indiquent une disparité intriguante par rapport à l'investissement provenant de sources extérieures dans les trois pays. D'une façon que l'on ne peut expliquer, la Bulgarie demeure pour les investisseurs de l'ouest un endroit ou l'on investi peu. Nous croyons que cette absence d'investissement est due à l'hésitation parmi les investisseurs d'explorer les opportunités qu'offrent le marché Bulgare.

Le but de notre étude est de prêter assistance aux investisseurs potentiels et leurs conseillers en leur présentant lesdites lois afin qu'ils puissent se familiariser avec celles-ci. De plus, les comparaisons seront utiles pour découvrir et comprendre les raisons à la base de la variation des investissements dans ses trois pays.

C'est dans cette même ligne directrice que nous entendons dirigé notre mémoire qui est divisé en quatre parties:

La première partie comprend l'introduction soit le but recherché par l'étude et le plan général de cette dernière;

La deuxième partie est le fondement de notre analyse et une attention toute particulière sera apportée sur les données statistiques disponibles sur l'investissement étranger dans les trois pays;

La troisième partie constitue le corps de l'analyse comparative. Elle met en relief les points suivants: les lois applicables sur l'investissement étranger, en incluant les lois portant sur le droit corporatif, le droit de propriété des étrangers et les régimes monétaires. Parmi les aspects les plus importants, nous traitons des sujets suivants: la façon dont les pays abordent le IDE et les formes différentes de l'IDE, les succursales des compagnies transnationales, les procédures particulières pour l'assurance et les opérations bancaires, les secteurs économiques fermés à l'IDE, le financement de

l'investissement, les mesures incitatives stimulant le IDE, et les garanties domestiques et internationales de l'IDE, etc.

Les critères employés dans l'évaluation des législations différentes visent les aspects essentiels de celles-ci. Cette approche restrictive est pratique étant donné le fait que le domaine de l'investissement étranger est très large;

Finalement, la quatrième partie de notre discussion est en fait une synthèse, tirées de l'analyse comparative des législations pertinentes qui nous nous aidera à déterminer et mieux cerner les raisons pour lesquelles il y a très peu d'intérêt au niveau de l'investissement étranger en Bulgarie. A la base de ce manque d'intérêt sont les aspects historiques, socio-culturels et géo-politiques, et non pas les différences marquées dans la législation.

ACKNOWLEDGEMENTS

I am truly grateful to the Faculty of Graduate Studies in Law, McGill University, for their timely decision to award me the Justice Greenshields Memorial Fellowship.

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I owe a great deal to my wife Svetlana for the instrumental as well as moral help I was not spared during the work on the present thesis.

Karen Michetti has graciously agreed to edit the present work, which is one of the many good things she has done for me.

And lastly, if any credit for the thesis is left, it should go to my personal resolution.

Yet to the dismay of free market proselytizers, ..., the Bulgarian reform seems to be evolving in a manner that may avoid slavish imitations of its Western progenitors - whether by design, by ineptitude, or by design feigning ineptitude, it is difficult to say. My travel guide notes, 'Bulgaria has an enigmatic reputation'.

*- Robert F. Schlack**

Introduction

Undoubtedly, the ultimate impediment to the development of East-West investment relations until 1989 was the long-standing ideological and political barriers, nurtured by the ongoing Cold War. In the economic sphere these barriers were epitomized by the sharp division of the world market into "capitalist" and "socialist," and the upheld, yet false, pretence of successful competition by the "world socialist market." To maintain that notion, the respective governments widely relied on money borrowed predominately from the West. It was, indeed, much easier than it is now, for the communist states to borrow money from the West. (The rationale of the availability of the West to lavishly lend money to the communist governments during that time can be a topic of another intriguing thesis.) As transparent as the "sympathetic" attitude of Western governments toward the beleaguered communist block may have been, the danger of the growing debt was comfortably let off the political agenda by the communist ruling elite.

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* *Professor of Economics, Carthage College, Kenosha, Wisconsin. The excerpt is from his article* "Going to Market in Bulgaria: Uphill on a Knife Edge" (1992) 27 Journal of Economic Issues 2, 515-526. *The author was a visiting Fullbright lecturer during the spring 1992 term at the University of National and World Economy in Sofia.*

Nevertheless, it gradually became apparent that the accumulated indebtedness of Central and Eastern Europe (CEE) to Western creditors required both a more stable source of badly needed hard currency and a channel through which to acquire technology, develop its human resources, restructure its economies and raise the standard of living. Even though regulation of foreign investment in the region was initiated in the 1970s and the 1980s[1], foreign capital participation under joint venture arrangements was insignificant. This lack of participation was mostly due to the severely restricted private sector, the dissimilar treatment of foreign companies compared to domestic enterprises, and the constant uncertainty of future legislative changes.

The true opening of the more or less closed opportunity for foreign investment in CEE, began with the collapse of the old regimes and the immediate initiation of a process of transformation toward a free-market economy. This transformation has simultaneously evolved on two levels: marketization and privatization. Accordingly, the host economies have undertaken a series of legislative changes in order to improve the existing framework or create an entirely new legal framework for foreign investment. As a result, most of the previously established institutional deterrents to the significant inflow of western capital have been removed, and a modern legal basis for foreign

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[1] A historical overview on the evolution of joint venture legislation in Eastern Europe is given in "Joint Ventures in the USSR, Czechoslovakia and Poland" (LL.M. Thesis, Institute of Comparative Law, McGill University, 1988) - a thesis authored by Georgios N. Boukaouris.

The time elapsed, however, has altered beyond recognition the legal environment in the former communist countries, and the legal system, traditionally considered conservative and slowly changing, has been transforming since 1989. Nevertheless, the thesis is a very useful source (with the attached appendices) on the former normative framework of foreign investment in the above countries, and with the abundant bibliography on the preceding years of the East-West trade relations.

investment has emerged.

In the same vein, since 1989 two major factors have significantly altered the previous situation. First, the private sector has resumed its full-range operation for the first time since the arrival of the communist regimes in the region. Second, which may be seen as resulting from the first, the programs for privatization of the overwhelming state-owned sector of the economy have been initiated everywhere in the region. Such programs required a different - more genuine and thorough - regulatory mechanism for treatment of foreign investment. The antiquated production facilities of the state-owned enterprises badly needed both capital for restructuring and new technology to improve productivity and enhance export prospects. With the poor savings rate of the local populace, otherwise eager to reach the western standard of living, the only feasible way of achieving the aforementioned goals was to introduce a modern Foreign Direct Investment (FDI) legislation with as few obstacles as possible for prospective investors.

Bearing in mind the intrinsic differences, such as economy size, industrial standing, market opportunities, and resource endowments, the evolution of investment relations in CEE is primarily determined by the existing legislation. The latter, as it will become clear through the present thesis, shares identical features in each country and should equally accommodate foreign investment.

Contrary to the anticipated outcome, however, one will clearly notice the different attitude of foreign investors toward Bulgaria compared with Hungary and the former Czechoslovakia[2], widely and correctly considered to be the leading examples in

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[2] For the purpose of discussing the business legislation in the respective countries, the actual split of the Czechoslovak Federation into the Czech Republic and the Slovak Republic will not be considered. That is, because the principal business laws were enacted by the Czechoslovak legislature prior to the peaceful dissolution. Those laws remain valid and applicable in both republics.

Eastern Europe. *"It's a country in the early stages of transition,"* said in 1991 Richard Rahn, president of Novecon Corporation in Washington and former vice president and chief economist of the US Chamber of Commerce. *"If you look at where Hungary was two or three years ago, that's where Bulgaria is today. And in the same way that Hungary is succeeding, Bulgaria will, too."*[3] Yet as encouraging as that prognosis may have been, the real situation with foreign investment in Bulgaria has remained bleak and pessimistic overall.

The aim of this thesis is to review and analyze the present situation in the three countries with regard to FDI, and to determine the reasons for the growing disparity of foreign participation in the three economies.

This problem will be approached from a legal standpoint, that is, an analysis of the legal framework of foreign investment in the respective countries will be made with emphasis on the differences (if any) and the similarities among them. The discussion will cover the latest changes in the relevant legislation in light of the international standards for foreign investment, and the actual state of foreign participation in the countries' economies. The criteria used in this study to analyze the respective legislations on FDI can be classified in two categories: First, some habitually used criteria such as forms of foreign investment available to foreigners, legal and international guarantees accorded to foreign investors, areas in which foreign investment is targeted etc., will be employed. Second, a list of "desirable features" of foreign investment laws will be compared for each country in order to render the findings more comprehensive.

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[3] *See* "Opportunity and Risk Coincide for MNCs Testing the Waters" *Business International* (18 November 1991) 4.

This comparative study will provide the prospective investor and her/his advisor with a useful insight into the effective legislation in the aforementioned countries, and allow us to draw some conclusions as to the reasons for the lack or decreased rate of foreign investment in Bulgaria as compared to Hungary and Czechoslovakia.

The anticipated answer is that there is nothing detrimental to be found in the investment legislation of Bulgaria in comparison to its counterparts in Hungary and Czechoslovakia, but apparently some other para-legal considerations prevail. A discussion of these considerations will follow.

I. Background Statistics for FDI in the Three Countries

Although the Bulgarians settled in what is now Bulgaria in the period following the fall of the Western Roman Empire, they remained subject to Byzantium rule to a greater or lesser degree until the fall of Constantinople to the Ottoman Turks in the fourteenth century and thereafter Bulgaria was subject to Turkish domination. It was not until the late nineteenth century that Bulgaria, actively supported by Russia, could establish itself as an independent, Slavic and orthodox Christian State.

In both the First World War and the Second World War, Bulgaria sided with Germany and lost territory to Greece and Yugoslavia as a result.

The former Czechoslovakia did not exist as a country until after the First World War. Czechoslovakia was formed out of the former Kingdoms of Bohemia and Moravia and part of the former territory of Silesia (some of which is now in Poland). The Kings of Bohemia and Moravia were independent Slavic monarchs until the end of the Middle Ages when both crowns fell into the hands of the Habsburg Dukes of Austria. The much feared presence of the Turks on the plains of Hungary in the sixteenth century, and the religious battles of the Thirty Years War in the early seventeenth century, helped to consolidate the Austrian hold on the Czechoslovak lands until 1918.

It was only the break-up of the Austro-Hungarian Empire after the war that allowed the Czechoslovak Republic to be established in 1918 as a democratic country. Until 1938, it ranked among the most developed countries of Europe, with the Czech Republic in particular as a centre of wealth comparable to Switzerland, the German Rhineland, parts of the UK and Scandinavia. Its exchange rate to the US dollar then is very revealing: it was K 1.00 to $ 1.00 (late 1992 it was K 28.00 to $1.00).

Hungary allied itself with Germany during World War II in what proved to be a vain hope of regaining two-thirds of its historic territory lost as a consequence of the peace Treaty of Versailles (Trianon) in 1920. In 1945, Soviet troops expelled German forces and remained in the country, helping the communist party break up multi-party democracy and create a monopoly of power.

Bulgaria, Czechoslovakia, and Hungary are characterized by approximately the same geographical and demographical parameters. The characteristics of the three countries, which show the alleged sameness, are shown in the following tables[4].

Country	Territory sq km	Population mln	Employment in manufacturing mln
Bulgaria	111.0	9.4	1.4
Czechoslovakia	127.9	15.6	3.0
Hungary	93.0	10.6	1.5

Country	Coal mln t	Electricity mlnKwh	Steel mln t	Cars thsnd	Tractors thsnd	TV sets thsnd
Bulgaria	34.1	45.1	2.9	15	4.8	199
Czechoslovakia	123.5	78.1	15.4	164	38.4	503
Hungary	20.9	29.2	3.6	-	-	414

The indicators chosen to convey the notion of proximity of the three countries,

[4] The information contained in the following tables is derived from (1990) 5 Monthly Bulletin of Statistics 1-3, for the first two tables, and The World Bank Atlas (1992), for the other two tables.

are not exhaustive of the economic standing of these countries. They are, however, representative of the industrial development and the capacity of the respective countries to be part of the industrialized world. The numbers also illustrate the role of foreign investment in the ongoing economic transformation of the region.

Country	GNP mln US $	GNP per capita US $	Share of Investment in GDP
Bulgaria	16,316	1,840	13%
Czecho slovakia	38,427	2,450	31%
Hungary	28,244	2,690	19%

Country	Industrial Production as % of GDP	Services	Scientists & technicians per 10,000	Government expenditure as % of GNP
Bulgaria	51	31	69	77
Czecho slovakia	56	36	69	61
Hungary	32	56	33	55

A brief overview of the progress in attracting foreign participation in each of the three countries is necessary to establish a basis for comparison and for conclusions.

An interesting result appears when the same variables[5] for the three countries, which may be considered as leading indicators of foreign investment, are juxtaposed.

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[5] All figures used in the following comparative features are derived from the World Investment Directory: Central and Eastern Europe (New York: United Nations, 1992), from the relevant sections on the three countries.

These are the following:

-The annual average of FDI in millions of dollars was:

Hungary -	1972-1991 -	104.5
Czechoslovakia -	1986-1991 -	80.0
Bulgaria -	1980-1991 -	27.3

After a 20-year period, Hungary reveals the highest annual average investment activity,which is almost four times bigger than the average for Bulgaria.

-Foreign direct investment stock in 1991 was (in mln US$):

Hungary -	2 089.3
Czechoslovakia -	480.0
Bulgaria -	300.0

Hungary, a country with territory and population identical to that of Bulgaria, registered for 1991, a direct capital investment seven times bigger than that of Bulgaria.

-Number of foreign affiliates in 1991 was:

Hungary -	11 000
Czechoslovakia -	4 000
Bulgaria -	900

Despite the fast response of the foreign business community to Bulgarian foreign investment legislation, the actual figures suggest a meagre foreign interest[6]. In 1989, at the beginning of the free market transition, 21 joint ventures and 12 subsidiaries were formed. The response was also cautious - only three joint ventures

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[6] *See* "Firms Shun Bulgarian Investment" *Doing Business in Eastern Europe* (21 January 1991) 3. (Price Waterhouse, New York: Price Waterhouse Center for Transnational Taxation), **(hereinafter** Doing Business in Eastern Europe).

and three subsidiaries had a foreign capital of over $100,000. In the following two years, the number of new registrations increased - 62 joint ventures and 48 subsidiaries in 1990, and 131 joint ventures and 67 subsidiaries in the first six months of 1991. But only in two joint ventures and three subsidiaries in 1990, and one joint venture and one subsidiary in 1991, did the investments exceed $100,000.

The level of foreign investment in Bulgaria rose steadily in 1992. The number of joint ventures increased to more than 2,100. The total value of foreign capital in those joint ventures, however, amounted only to $100m. Over 50% of cumulative foreign investment came from Turkey and the Middle East. Over 85% of the joint venturess registered in the last two months of 1992 contributed no more than the minimum amount of foreign capital required under the 1991 Foreign Investment Law (FIL) - namely Lv50,000 (US$1,915). Most of these joint venturess are to be found in the service sector - predominantly in import, exports and retail.

Furthermore, of the 16 largest affiliates in **Bulgaria**, six were subsidiaries of the former Soviet Union entities, five of which were at the top of the list[7].

For the same period, 55 large foreign companies have established their affiliates in **Czechoslovakia**, none of them a subsidiary of a Soviet enterprise[8].

FDI in the Czechoslovak federation reached $1.7 bn by the end of 1992. The first quarter of 1993 saw foreign investment totalling $302 m, 31 percent increase for the same period in 1992. From the beginning of 1990 to the end of March 1993, the total foreign investment had amounted to $1.862 m only by the USA.

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[7] Bulgarian Chamber of Commerce and Industry, 1991; World Investment Directory (New York: United Nations, 1992) 101.

[8] *Id.* at 162.

Hungary has attracted 66 large foreign names with no Soviet presence among them, including giants like General Motors, Suzuki, General Electric, Sanofi, Ford Motor Co. etc[9].

The situation a year later reveals the following:

Hungary is the undisputable leader: since 1989 with the passing of allegedly favourable foreign investment legislation, the flow of FDI has reached $5 bn. For 1993 Hungary expects, in the words of the prime minister's office, to reach a level of $1.7 bn[10].

The numbers for **Bulgaria** are apparently so modest that in a series of reports on Bulgaria, regularly done by *The Economist*, no citations of the FDI flow into the country are given. Instead, the deteriorating economic situation in that country is the main topic of discussion in the journal. Thus a slump of 17 percent in the industrial production in the first quarter of 1993 compared with the same period last year and an industry operating at 53 percent of its capacity, is the bleak characteristic for Bulgaria[11].

The aforementioned numbers are self-explanatory and clearly indicate that foreign investors are not equally interested in Bulgaria compared with the other two countries. Whether it is a question of an underlying difference in the legal framework

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[9] *Id.* at 203.

[10] Hungary has experienced a dramatic growth in the number of joint ventures in the last five years. In 1988 there were only 176 registered joint ventures; as of July 1993, Hungary had approximately 16,700 joint ventures. The number of active joint ventures is estimated to be about 80% of this figure, or approximately 13,500. Total cumulative foreign investment in Hungary is now $5.15 bn, more than half of all foreign investment in Central and Eastern Europe. In 1992 Hungary received $1.65 bn in foreign capital, and had accumulated another $450 m as of July 1993.

The preceding information is taken from "Legislation On Joint Ventures: Introduction" *Doing Business in Eastern Europe* (1 September 1993) 4.

[11] *See* Country Report *The Economist Intelligence Unit* (3rd quarter, 1993) (for reference on the economy, foreign trade and payments, and other business news).

for foreign investment in the surveyed countries, or it is due to some unrelated to the law matters, provides the object of the analysis in the following pages.

To clarify the analysis of the current legislation in the respective countries, a retroactive review of the main features of the relevant legislation will follow.

II. Background Legislation in the Three countries

The post-war evolution of regulations permitting foreign investment in the three countries has reflected the same political considerations and therefore has been very similar. Slight deviations from the "general line" were unimportant for they usually were brought into the step through the implementation procedures[12]. The largely nationalized economies would not allow unlimited foreign participation for fear of undermining the very basic idea of communism - the state is the owner of the means of production and consequentially exercises the full supervision and control over all sectors of the economy. Thus, the dilemma found an expression in the rigid and unequivocal requirement of a state majority holding in the joint ventures to prevent the inherent tendency toward capitalist exploitation. Except for some isolated examples of joint ventures throughout the region[13], the notion of restricting the alien elements in the national economy had reigned for many years.

Nonetheless, the legal status of foreign enterprises had been established for the first time in Hungary in 1972, followed by Bulgaria in 1980, and Czechoslovakia in 1985. It is important to trace back the history of that legislation for two reasons: First, the historical perspective will illuminate the legal forms of business activity already in place by 1989. Thus, the transition from a centralized, command economy to market or mixed economies in the three countries would be accurately reflected as a process of continuity and succession, and not as an instantaneous mystical transformation.

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[12] One of the numerous anecdotes, that aptly though sadly mirrored that reality, told that deviations from the Party General' Line were permitted as long as they stuck together with the Line.

[13] For a historical perspective on the subject, see *supra* note 1 at 2-11.

Second, the examination of the existed legal infrastructure will very clearly signify another typical for the former regimes feature: the hypocrisy. In other words, the creation of pertinent legal infrastructure reflected the political considerations of the ruling elite rather than the economic necessity for cooperation, freer international trade, and unrestricted flow of capital.

The following parts will provide the background legislation of foreign direct investment found in the three countries as of 1989, and up to the present.

Bulgaria

The first Law to regulate economic activities in Bulgaria dates back to 1898 and was inspired by Hungarian, German, Italian and Romanian Commercial Laws. It underwent many changes until 1946 and was abolished in 1951 when a state monopoly on the entire economy was introduced. Other reform measures had been announced in 1970 and 1980[14], but these were merely attempts to correct faults within the existing economic system rather than attempts to change the basis upon which the industry operated.

As the country began its transition from a centrally planned economy to a market economy in the second half of the 1980s, the need for regulatory changes was clearly felt, particularly in order to regulate the establishment of new firms, the various legal forms these could take, and their relations with the State. Decree 56, adopted in 1989 and outlined below, attempted to respond to this need and to introduce radical

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[14] The first law on foreign investment in Bulgaria was passed by Decree No.535 on Economic Cooperation between Bulgarian Legal Persons and Foreign Legal and Physical Persons of 28 March, 1980, *State Gazette* No.25/80. It was repealed by Decree No.56 on Economic Activity of 9 January, 1989, *State Gazette* No.4/89, Chapter 5 of which regulated the economic activity in the country of foreign and mixed firms.

economic reforms.

Economic reforms in Bulgaria started with the adoption in 1989 of Decree 56 on "Economic Activity in the People's Republic of Bulgaria," (hereinafter referred to as Decree 56). Decree 56 introduced the *Firma* (firm, company) as the basic structural unit of economic activity, allowing plurality of ownership forms (state, municipal, cooperative, private and mixed) and legal status (stock companies, limited liability companies and unlimited liability companies). The Decree guaranteed these enterprises, which were to be freely created, equal economic and legal conditions and required existing undertakings to be transformed into one of these new legal forms. Moreover, the Decree allowed natural persons (individual citizens or groups of citizens) to conduct economic activities even without registering a firm.

The planning and regulatory functions of the State, which set strategic and socio-economic targets, were to be combined with the operation of market mechanisms and the firms' new complete autonomy (self-management became the rule). The independent firms were no longer liable for the obligations of the State or of other companies, and the State was not liable for the firms' obligations. They were to operate on cost-accounting principles and had to submit an annual report endorsed by a legally qualified person to the local tax authorities every year.

Decree 56 abolished the state monopoly on foreign trade and payments and introduced currency auctions. It also allowed companies to set up business associations and form unions. It provided for the protection of economic activities and investments by foreign legal and natural persons in Bulgaria and guaranteed them economic and legal conditions equal to those that apply to Bulgarian nationals. However the Council of Ministers could rule that this protection would not apply, in whole or in part, to companies or individuals from countries that discriminate against Bulgarian firms.

Decree 56 represented only the first stage of economic reforms. A new Law on Commerce was adopted in May 1991. This was drafted considering the commercial laws in force in western countries, the commercial laws recently adopted in other East European countries and the proposed European Community Directive on the "European company" statute. The Law on Commerce repealed Chapters 1 and 2 of Decree 56, which comprise the general regulations and govern the various legal forms firms could take. It left mainly unchanged, however, the provisions on insolvency and liquidation of companies, those on the state regulation of economic activity and the provisions regulating economic activities of foreign and mixed companies. Regarding the latter, a Law on Foreign Investment was adopted in July 1991, repealed by the Foreign Investment Act of January 1992, which now regulates foreign investment in Bulgaria.

The Law on Commerce regulates trade in goods and services, banking and financial activities, transport, tourism, advertising, etc. Traders can be commercial companies or co-operative associations, except housing co-operatives. Natural persons engaged in farming, craftsmen, self-employed suppliers of professional services and free-lance professionals are not covered by the Law on Commerce. However independent, self-employed providers of transport services, banking, tourism or advertising services for example, would have to be registered as "traders" under the Law on Commerce.

Since early 1989, the government has passed a series of laws further encouraging this transition. In May 1991, legislation was passed transforming enterprises into "commercialised" companies and giving firms the basic right to make their own economic decisions (the state, however, remains the chief shareholder in such companies). Other laws passed since 1990 have provided new Western-style accountancy rules, new, more liberal banking regulations, price- and trade-liberalisation measures, new transfers and wholly owned subsidiaries, new legislation on competition and a law on environmental protection[15].

Bulgaria thus enacted a comparatively liberal regime that allowed the creation of foreign enterprises of unlimited duration in all sectors of the economy. Non-Bulgarian nationals, however, could not become presidents or managing directors of the newly created companies. Remittances could only be made out of export earnings. Taxation was at 10 percent on profits transferred abroad and 20 percent on income. The law provided for a three-year tax holiday in the latter case[16].

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[15] The most important new laws are:
* The Commercial Law;
* The Law on Economic Activity of Foreign Persons and Protection of Foreign Investments;
* The Accountancy Law;
* The National Chart of Accounts;
* The Competition Law;
* The Law on Transformation and Privatisation of State and Municipal Enterprises;
* The Law of Banks and Credit Activity;
* The Law on Ownership and Usage of Agricultural Land;
* The Law of Turnover Tax and Excise Duties;
* The Law on General Income Tax;
* The Environmental Protection Law;
* The Law on Foreign Currency Transactions;
* The Customs Duty Law.

Most of the above cited laws are published in English in Central & Eastern European Legal Materials (New York: Transnational Juris, 1991) (compiled by *Parker School of Foreign and Comparative Law, Columbia University*) (**hereinafter** - *Parker School...*).

[16] If one measures the corresponding tax burden and the available tax incentives in the other CEE countries at the time, one will clearly observe that the Bulgarian FIL was more favourable than its counterparts. For that purpose, see *supra* note 1 at 96-99.

Czechoslovakia

The Czechoslovakian law[17] permitted the foreign stake at 49 percent thus retaining the majority holding for the domestic partner[18]. The established joint ventures were confined to operate only in the area of industrial production. The key management positions had to be filled by Czechoslovak citizens. Income tax was set at 50 percent and an additional levy of 25 percent was imposed on hard currency remittances.

The policy favouring participation of foreign capital in Czechoslovakian enterprises predates the 1989 revolution. In November 1988, the Federal Assembly adopted a law on joint ventures (1988 Foreign Participation Act or 1988 Act[19]). The 1988 Act exempted foreign joint ventures from requirements imposed by the system of central planning and provided both tax and non-tax incentives to those wishing to invest in Czechoslovakian state enterprises. This Act generally limited foreign

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[17] The national framework for transnational corporations is represented by the following legal acts:
* The Commercial Code, which repealed 86 previous laws and regulations and thus became the basic law of any commercial activity
* Act on the Terms of Transfer of State Property to Other Persons (The "Large-Scale" Privatization Law)
* Act on the Protection of Economic Competition
* Announcement of the State Bank of Czechoslovakia No. 15 Regarding Transfer of Income from Nonresident Investments
* Foreign Exchange Act
* Law on the Transfer of State Ownership of Certain Property to Other Legal or Natural Persons (The "Small-Scale" Privatization Law)
* Small Businesses Act
* Bankruptcy Law

The English translation of most of the statutes is found in *Parker School....*

[18] See *supra* note 1 at 61, where the 1985 Principles (attached as *Appendix E* to the cited thesis) are discussed in that regard.

[19] The Enterprise with Foreign Property Participation Act of November 8, 1988, No. 173/1988, *Collection of Laws.*

participation to 49 percent of a joint venture's assets, and it only guaranteed repatriation of profits to the extent that the joint venture generated foreign currency. Subsequent amendments offered a reduced income tax rate to joint ventures of 40 percent of profits rather than fifty to 65 percent rates imposed on Czechoslovakian companies.

The 1988 Foreign Participation Act was substantially amended after the "velvet revolution" (1990 Foreign Participation Act or 1990 Act[20]). Most of the limitations in the 1988 Act were removed. In contrast to the 1988 Act, which allowed only state enterprises to enter into joint venture agreements with foreign parties, the 1990 Act invited the participation of private Czechoslovakian companies and individual citizens. For example, there was no limit on a foreign participant's share in the enterprise. Perhaps the most extensive innovation was the application of the 1990 Act to wholly-owned foreign enterprises. This provision transformed the 1990 Act into a statute regulating all forms of foreign investment, not merely those involving partnership with a Czechoslovakian participant. In this peculiar fashion, the law opened the door to direct foreign investment.

Hungary

The Hungarian law allowed foreign nationals and companies to operate in Hungary only as partners in joint ventures with domestic enterprises, and with equity

[20] The Enterprise with Foreign Property Participation Act of April 19, 1990, No. 112/1990, *Collection of Laws*. Translation in *Parker School... vol. 2*, Release No.6 (New York: Transnational Juris, September 1991).

holding of not more than 40 percent[21]. Even though the management of these companies was not restricted to Hungarian nationals (as was the usual case in the other two countries), remittances of hard currency could only be made out of export earnings and the corporate income tax was levied at a rate of 40 percent. As an incentive, a five-year tax holiday was available for enterprises in the designated sectors of the economy[22].

The Foreign Investment Act[23] and the Company Act[24] contain aspects of

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[21] Hungary, though, was the first CEE country to allow foreign majority equity share in specific sectors of the economy such as tourism, finance and services. For details, see *supra* note 2 at 60. The conclusions are drawn from "East-West Joint ventures: Economic, Business, Financial and Legal Aspects" (New York: United Nations Publications, 1988) at 45.

[22] The most salient laws on business activity of foreigners in Hungary are:
* Act VI of 1988 on Economic Associations and Joint Ventures
* Act XIII of 1989 on the Transformation of Business Organisations and Companies
* Act V of 1990 on Private Business Ventures
* Act VI of 1990 on Stock Exchanges and Securities
* Act VII of 1990 on the Protection of Assets of State-owned Companies
* Act LXXIV of 1990 on the Privatization of State-owned Companies
* Act LXXXVI of 1990 on Prohibition of Unfair Market Practices
* Decree 11/1990 on Antidumping Practices
* Act Vi of 1991 on the Modification of Act XXIV of 1988 on Investment of Foreigners in Hungary
* Act XVI of 1991 on Concessions
* Act XCVIII of 1991 - Amendments of Act XXIV of 1988 on the Investment by Foreigners in Hungary

These, and other relevant laws are published in English in *Parker School....*

[23] Act XXIV of 1988 on the Invastments of Foreigners in Hungary, effective as of January 1, 1989, translated by Ministry of Finance (1989) 49 Public Finance in Hungary **[hereinafter** Foreign Investment Act]; as well in *Parker School...*, vol. 2, Release No.6 (New York: Transnational Juris, September 1991).

[24] Act VI of 1988 on Economic Associations, effective as of January 1, 1989, translated in Ministry of Finance (1988) 45 Public Finance in Hungary **[hereinafter** Company Act]; Ban, Csanadi, & Madl, in "Legal Aspects of Doing Business in Eastern Europe and the Soviet Union" D. Campbell ed. (1986) 169, 170-80 (discussing the legal forms available to foreigners). For a discussion of the old legal system in Hungary *see* Eichmann, *"Joint Ventures in Hungary: A Model for Socialist States"* (1988) 20 Law and Policy of International Business 259 ; Rafaelele, C., *"Note: The Recent Transformation of Hungarian Investment Regulation: The Legal Framework, the New Regulation of Direct and Financial Investment, and the Dynamics of Reform* (1988) 12 Maryland Journal of International Law & Trade 277 .

German Corporate law remaining on Hungary's statute books after the Communist revolution. The Commercial Code of 1875, enacted during the Austro-Hungarian Empire, and the Code on Limited Liability Companies, enacted by the inter-war Hungarian Republic, remained in force after 1945. Both laws closely resemble the German and Swiss commercial laws at that time. One of the few examples of a company established by a foreign parent under these laws is IBM Hungary.

The two Acts provide that foreign or domestic investors may establish one of the six legal forms: (1) limited liability companies (LLCs); (2) companies limited by shares (CO. Ltds.); (3) general partnerships; (4) deposit or limited partnerships; (5) joint enterprises; and (6) incorporated trade associations.

These legal forms were available for joint ventures between Hungarian and Western parties under pre-existing law, although general or limited partnerships were not available after 1986. Before the 1989 reforms, none of these legal forms were available to domestic investors.

Apparently when the collapse of the socialist system occurred in 1989, the legal basis for foreign investment in these countries was identical. In terms of created incentives and impediments imposed on a foreign investor, the Bulgarian law was the most favourable. In spite of this fact, and the two subsequently introduced investment laws that are aimed at further improving the conditions for the operation of FDI in Bulgaria, the scope of FDI in Bulgaria remained almost unaltered.

Whether the reason for the sluggish interest of foreign investors in Bulgaria is due to some flaws in its FDI law will be explored through a comparison of the three legislations. The next part provides the theoretical basis for that comparison.

III. Fundamental Factors of Assessment of Foreign Investment Laws

The concept of corporate personality and capacity (considered fundamental in Western legal theory and practice) under centrally-planned economies, where all businesses have been state owned and controlled, has been deliberately neglected in incidental laws and regulations on the subject[25]. Being originally inspired in large part by the continental civil law system, the respective legal systems in Bulgaria, Czechoslovakia, and Hungary underwent a significant transformation over the forty years of communism in order to enable the regimes to carry out their objectives. One of the repercussions of that transformation affected the legal framework for the business activity of foreign persons, which remained rudimentary and superfluous, and apparently could not be utilized to meet the new requirements of the transition to a market economy. Accordingly, a new body of law has been evolving since the beginning of the dissolution of the state sector of the economy. We may expect that for some time the newly created private enterprises will coexist with state-owned and

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[25] Before the beginning of the transformation, inward investment had been possible by way of joint ventures, and every country in the region had introduced, often in a lower hierarchial form, a normative act governing this mode of investment. These are as follows:

1. Until 1989, Decree 535/1980 regulated foreign investment in Bulgaria. Decree No.56 on Economic Activity effective as of 12 January/1989 replaced the previous law and introduced a more elaborated regime for joint ventures.

2. Similarly, the Czechoslovak law on business activity of foreign persons dates back to 1985, when Resolution No. 187 of the Czechoslovakia's Federal Assembly called "Principles Governing the Establishment of Activities of Joint Companies" was adopted.

3. Hungarian law has permitted foreign investment in the form of joint ventures since 1973, namely Decree No.28/1972 of the Minister of Finance allowed foreign persons and companies to acquire up to forty-nine percent of the equity of a joint venture. This was amended by section 4 of Decree No.7/1977 of the Minister of Finance, permitting the foreign share to exceed the stipulated limit where the joint venture was operating in the services sector, or in banking. A prior consent of the Finance Minister was the prerequisite for such activities. Section 2 of Decree No.63/1982 of the Minister of Finance, foreign participation in other sectors was allowed only in "exceptionally important circumstances" and conditional on the consent of the Finance Minister.

state-controlled businesses. The concerted effort, however, is focused predominantly on the laws necessary to create the legal environment in which the economic transformation can be carried out.

The law governing foreign investment represents the most important part of the body of new law. Bulgaria and Hungary have introduced separate laws on foreign investment where fundamental issues such as guarantees, protection, forms, permits, defining foreign persons etc., have been established in general. Czechoslovakia chose to pursue the same goals by devoting a separate part in the new Commercial Code to foreign investment issues without legislating particularly on foreign investment in a different law. Nevertheless, the specific investment laws do not suffice to establish a complete set of legal rules with regards to initiating foreign investments nor to their operation. These laws constitute the rules applying to foreign investment, but they are of little use for the practical use of foreign business projects. Therefore, a number of already existing laws were amended and some new laws were enacted with respect to establishing and protecting property rights, transferring the ownership of land and business, privatization, and establishing companies.

Factors to be compared

The entire legal system and numerous non-legal factors play a decisive role in the creation of an attractive environment for transnational investments in a country. All these factors in the three countries are currently in a state of flux, and many laws and regulations are presently under amendment, revocation or replacement by new legislation[26].

To carry out the comparison of the legislation of Bulgaria, Czechoslovakia and Hungary, a set of factors ought to be determined. These will be the routinely used for the appraisal of investment regime factors. A very useful list of "desirable features," given by *Conner*[27], could enhance the theme of our discussion. The author used a selective list of main factors with principal importance for foreign investment[28]. Since

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[26] Before the comparative analysis of each law or regime of foreign investment is commenced, a brief indication of the most salient statutes on FDI follows.

Bulgaria - Law on the Business Activity by Foreign Nationals and Protection of Foreign Investment, dated January 16, 1992 (the Bulgarian FIL, *State Gazette* No.8/ January 28, 1992. The translation of the FIL used herein is the text published in "Investment Laws of the World" (New York: Oceana, 1972). The same version is published in World Investment Directory: Central and Eastern Europe vol. II (New York: United Nations, 1992), and the Commercial Code (the Law on Commerce), enacted May 16, 1991(The English text is published by the Bulgarian Chamber of Commerce and Industry and Intertext, Sofia: Press Agency, 1991; and in *Parker School...*, vol. 1, Release No. 7 (New York: Transnational Juris, December 1991).

Czechoslovakia - The Commercial Code, Chapter 2 of the General Provisions, effective January 1, 1992 (Law No. 513/1991 (*Collections of Law*).

Hungary - Act XXIV of 1988 on the Investments of Foreigners in Hungary, effective January 1, 1989 (the Hungarian FIL), and the Act on Economic Associations, effective January 1, 1989 (*See supra* notes 22 and 23. The translation of the FIL is found in "Investment Laws of the World" (New York: Oceana, 1972), published as well in World Investment Directory: Central and Eastern Europe vol. II (New York: United Nations, 1992).

[27] *See* Conner, J., *"Recent Developments in Eastern European Laws on Investments by Foreign Firms"* (1992) 4 ICSID Rev. Foreign Investment Law Journal 4 at 241.

[28] The factors, considered fundamental for both the investor and the host country, listed from the most general to the most concrete, are:

1. Legal structure, treatment, and protection of FDI.
2. Admission, governmental approval process, and registration.
3. Authority for a majority interest in the enterprise.
4. Free access to the management.
5. Property rights: to own, lease or use land.
6. Access to local markets.
7. Expropriation and compensation.
8. Banking and finance.
9. Employment provisions.
10. Tax burden and incentives.
11. Accounting system.
12. Repatriation of profits and capital.
13. Dispute settlement mechanisms.
14. Available corporate forms.

Different factors will be allotted different space in accordance to the significance they these factors are universally valid for the assessment of foreign investment legislation, most of them will be employed directly and some others will be added. The factors purport to cover most, if not all, areas of prime interest to any foreign investor. The elaboration of the factors will illuminate the legislative solutions in force in the respective countries.

Furthermore, the criteria used by influential international organisations will be considered to ensure that the study is in step with contemporary international standards, and to place the surveyed legislations in an international setting[29].

Although this selective approach may not give the real picture of the investment environment in each country, it is the only comprehensive tool for assessment of the legislation. It will further be supplemented by the international standards found in the "Guidelines."[30] Finally, some other factors, such as economic development, capital markets and currency regimes, banking and financial provisions, international standing etc., will be reflected in the general conclusions on the topic.

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have for foreign investment.

[29] It is advantageous that the World Bank Group (comprising the World Bank, including its financial affiliates Multilateral Investment Guarantee Agency (MIGA) and International Finance Corporation (IFC), and the International Monetary Fund (IMF)) concluded in 1992 the effort to produce a legal framework to promote foreign investment. The working group prepared set of rules called "Guidelines on the Treatment of Foreign Direct Investment" (1992) 7 ICSID Rev. Foreign Investment Law Journal at 297, embodying commendable rules, that though not legally binding could greatly influence the development of international law in this area. The Guidelines focus on each of the four main areas usually dealt with in investment treaties, namely admission, treatment, expropriation of foreign investments, and settlement of disputes between governments and foreign investors. The findings of the working group such as classifications of different countries according to the employed criteria, and the recommendations for approaches to the main issues, will be applied against the actual state of the explored legislations in order to obtain the most objective picture of the three legislations.

[30] *Id.*

1. General Legal Aspects of FDI

A. Treatment and protection of FDI

Typically any national investment policy has as its central goal the enticement of foreign investment at a minimum price for the host country. The foreign investor, aware of this, demands a perfectly clear set of rules about entering and operating in the host country. National treatment is often not enough and special guarantees are demanded. The response is commensurately adequate: the legislature creates the most suitable, tailor-made regime for foreign investment, with all potentially contentious issues dealt with in favour of the prospective investor.

However, the central problem, namely, the confidence of the prospective investor that all initial expectations and business plans will coincide with the reality in the host country, persists. This concern goes far beyond the FDI legislation, and encompasses political, social, and cultural dimensions that will be reflected upon following the analysis of the legal framework.

There are several ways of enacting foreign investment legislation (FIL). The most preferable for the foreign investor is the most overarching one, i.e., a single law, which comprises all issues of interest for an investor. Thus, the potential for other laws to apply to investment issues is low, which comforts the foreign investor in an alien legal environment. Despite all the positive attributes of this approach, it is far-fetched given the multiplicity of issues related to foreign investment that cover virtually the entire spectrum of business legislation.

The attractiveness of a country's foreign investment regime would be lessened if the second possible approach is adopted: of enacting a different law on every particular matter, e.g., on registration, banking, taxation, employment, corporate forms etc. This approach would inevitably require extensive legal knowledge (counselling), and may result in the blurring of the future of the business project. The uncertainty with this approach, therefore, is prevailing.

A third option for the host country would be to conclude bilateral investment treaties (BITs), through which the state can accomplish two principal objectives: First, the state thus undertakes to encourage and facilitate investments from a particular country on a reciprocal basis. Second, the host country could easily admit foreign investments following the state's laws and regulations. As universal as this approach may be, it takes a prolonged negotiation process, and above all, it is applicable solely between the signatories.

The whole spectrum of approaches will be canvassed across the three countries of interest to the present analysis.

Bulgaria

After the litany of half measures reminiscent of previous times was over, Bulgaria has introduced two laws on foreign investment: the Law on Commerce and the Law on Economic Activity of Foreign Persons and for Protection of Foreign Investments.[31] The latter consists of only 16 articles, and conversely to what a foreign investor would probably expect, it is sparse with regard to details. The law is basically a legal framework for foreign investment rather than a detailed and complete statute of foreign economic activity in Bulgaria. The law is important, however, for recognizing the foreign investor and for providing the foundations for business initiatives by foreigners. These 16 articles are fully designed to address the most sensitive investment issues,

[31] See *Appendix "A"*.

such as investment protection, repatriation of profits, bank account regulations, and special permits. Being nevertheless the basic law on foreign investment, the FIL provides the essential rights of foreign investors. Upon encountering problems when trying to implement his/her business project, the foreign investor always can claim the rights established in the FIL. Even though this law may seem cursory, it is so far the most authoritative normative act on investment in Bulgaria.

A couple of provisions with respect to the protection of foreign investments can be discerned in the Bulgarian legislation. Art. 19 (3) of the Constitution stipulates that foreign investment is protected by the highest in the hierarchy of normative acts - the law. Art. 5 of the Constitution, gives priority to international agreements over national law on the same matter. The same is repeated by art. 7 of the FIL, namely, an international agreement creating more favourable conditions for economic activity of foreigners will override the FIL. An overarching protection to all undertakings under this or previous laws against subsequent changes in the legislation is given by art. 8 of the FIL.

The FIL of Bulgaria is intended to be read in conjunction with the country's new Law on Commerce, which represents its company law. All forms of business organisations are delineated in the Law on Commerce, which is equally applicable to both local and foreign participants in the economy. To borrow the terminology of Conner[32], Bulgaria has departed from its previous approach to enact a more "comprehensive" law (meaning Decree No.56, repealed by the new FIL), and has introduced a "bare-boned" FIL. The latter makes the research of the Bulgarian law on investment an arduous task, the basic law being silent on many important matters.

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[32] See *supra* note 27.

Czechoslovakia

The recent changes in the Czechoslovak FIL did not alter the trend of that country's approach toward foreign investment legislation. The new Commercial Code of Czechoslovakia, 1992, repealed 86 previous rules and regulations codifying economic relations, among them the old Economic Code, the Joint Venture Law, and the Law on Joint Stock Companies, and most importantly, the Enterprise with Foreign Property Participation Act[33] being the FIL until 1992. The new Code covers a vast range of subjects, including, but not limited to, foreign investment, competition, company accounting, trade obligations, sale of goods, agency and international trade. Notwithstanding its wide reach, there are large areas, which the Code leaves for codification by specific acts. To name only a few, specific acts have been adopted to cover bankruptcy, antimonopolization law, banking, and individual private enterprises.

Of particular importance to foreign investors[34] is Chapter 2 of the general provisions, entitled "Business Activities of Foreign Persons."[35] The major effect of these new provisions is that foreign investors may now operate in the CSFR as any other domestic investor unless the law provides otherwise. Foreign investors cannot acquire real estate in Czechoslovakia, unless they set up a company. It should be noted that property of foreign investors may not be expropriated without a government act and any compensation is freely transferable to another country in a foreign currency.

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[33] See *supra* note 20. For the English translation of the Act, see World Investment Directory: Central and Eastern Europe vol. II (New York: United Nations, 1992), the section on Czechoslovakia.

[34] "Foreign" under the Code means either a natural or legal person with permanent residence or registered seat outside the CSFR. Sect. 21(2) of the Commercial Code, No.513/1991 *Collection of Laws*.

[35] See *Appendix "B"*.

Judicial protection against expropriation may also be claimed.

The new Code is intended to be compatible and consistent with international treaties and conventions to which CSFR is a party. If there is a conflict between the provisions of the Code and the binding international agreement, the international agreement will prevail (as long as the international agreement became a part of the Czechoslovakian law and was published in the Collection of Laws)[36].

Although found in a general commercial code, the FIL of Czechoslovakia resembles the Bulgarian statute, with its emphasis on accessibility for the foreign investor.

Hungary

The foundations for foreign investment in Hungary are contained in the Act XXIV of 1988 on the Investments of Foreigners in Hungary, effective January 1, 1989 (the Hungarian FIL[37]), and the Act on Economic Associations, effective January 1, 1989. With the passage of the Investment Law of 1988, Hungary became the first East European country with a comprehensive legislation guaranteeing profit repatriation and offering investment guarantees with regard to either nationalisation or expropriation. The FIL addresses the various corporate, regulatory, tax and foreign exchange requirements specifically applicable to foreign investments in Hungary. Inasmuch as the FIL is the principal law on foreign investment, it is basically a framework, because most of the applications of that law are found in the Act on Economic Associations.

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[36] See Sect. 25 (3) of the Commercial Code:

(3) International agreements binding on the Czech and Slovak Federal Republic and published in the Collection of Laws shall not be affected.

[37] See *Appendix "C"*.

Hungary's new laws allow up to 100 percent foreign ownership of Hungarian corporations, repatriation of invested capital, limited liability companies, and various tax incentives (something to be changed soon[38]) to encourage foreign capital participation.

The Hungarian approach is identical to the Bulgarian one because it establishes the same grounds for foreign investment participation.

The Czechoslovak FIL appears to be more comprehensive and congenial to foreign investors when compared with the FILs of the other two countries. This result is achieved by placing the FIL provisions in a general commercial act that can be referred to for particular provisions.

The three FILs equally present a system of law that is familiar to, and comfortable for, westerners who may be considering investing in these countries.

B. Admission, governmental approval process, and registration

Each of the new FILs has addressed the issue of governmental approval in a positive way, that is, generally any requirement for approval of foreign investment has been eliminated. Some areas of the economy, however, are conceivably limited for foreign investment. We will explore the main characteristics of such limitations through a comparison of the three countries.

Bulgarian FIL has stipulated a permit requirement in a limited number of economic activities[39]. This approach is similarly employed by the other two legislations.

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[38] See further the section on Taxation.

[39] See *Appendix "A"* at art. 5 para. 3. Production and trade with weapons, ammunition and military equipment; providing banking or insurance services or participation in such institutions; acquisition of immoveables in certain geographical regions, designated by the government; exploration, development or exploitation of natural resources in the territorial sea, the continental shelf or the exclusive economic zone.

There are no sectors of the Hungarian economy, which are closed to foreign investment[40]. However, some specific business activities require special *concessions*[41], which by definition give at least a local monopoly to their operators.

Businesses operating a concession are required to form a specific corporate vehicle and to accept certain additional supervision requirements, mainly in order to ensure minimum levels of operation at acceptable prices.

In the defence industry, the participation of at least one Hungarian shareholder in the business entity may be required as a condition of the concession.

The Czechoslovakian Commercial Code has provided that a foreign investor can engage in business activities by establishing a local corporation or acquiring such

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The government must also decide what geographical areas are to be subject to permission requirements, and it is not apparent where or how extensive these areas will be. Finally, the guidelines to be used in granting permission for foreign investment have not been published.

[40] Act No. VII of 1990 on the State Property Agency and on the Management and Utilization of Property Belonging to its Scope, as amended by Act No. LIII of 1990, *Parker School...* The government recently drafted proposals that restrict private ownership in state-owned industries deemed "strategic". Under these proposals, the state retains up to 51% control of the energy sector, a majority stake in the national airline (Malev) and control of major manufacturing concerns (including manufacturers of pharmaceuticals and aluminium, and the automotive and engineering firms Raba, Csepel Auto and Ikarus). All prospective direct investors are required to secure prior approval from the Ministry of Finance and the Ministry of Foreign Economic Relations if they target such enterprises in the process of privatization.

[41] Act No. XVI of 1991 on Concessions, *Parker School...* These include:
roads, railways, harbours, airports and trains;
telecommunications networks;
electric power stations and power lines;
natural resource extraction and exploration;
pipelines;
radioactive products and drugs;
gambling;
postal and telecommunications services; and
transport.

an entity, as long as it is registered in the trade register[42]. To form a legal entity with foreign capital participation, government approval is no longer required, provided that the company is no longer state owned. Establishing a joint venture with a state-owned enterprise is possible only through the privatization scheme.

However, special acts, such as those in banking, insurance, and telecommunications, may still require state approval. Since the areas for which a state approval may still be required are not listed in the Code, a foreign investor must verify whether special acts in her/his area of investment exist. For example, special legislation exists for the privatization of state enterprises, including the procedure allowing foreign investors to acquire stakes in these state entities[43].

The above comparison shows that the Bulgarian legislation is still inexplicably cautious with the foreign participation. This caution is a clear sign that the past is not entirely overcome. Thus, the state control, even loosened to a significant degree, is still present in forms such as the following: A permit must be obtained from the government by companies with a share of foreign participation such as to provide for decision-making by the foreign participant. Subsequent acquisition of a voting majority position in one of the enumerated activities falls as well under the permit requirement.

While this is the general rule in Bulgaria, the Hungarian FIL expressly allows

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[42] The Commercial Code at Sect. 21(4) stipulates:

"A foreign person's authorization to conduct business activities on the territory of the Czech and Slovak Federal Republic shall be established on the day on which that person, or the person's organisational part, is recorded in the Corporate Register. The foreign person shall be authorized to conduct the scope of business activities as specified in the Corporate Register. A petition requesting registration in the Corporate Register shall be filed by the foreign person."

[43] Pertinent provisions are in the Large Privatization Act (92/1992). Additional rules and procedures are contained in the Regulation of the Federal Government of the CSFR on coupon privatisation (69/1992). In effect from February 28, 1992. Establishes new maximum percentage (20%) of ownership of shares held by one privatisation fund in one company.

foreigners to establish, or to obtain ownership interests in business organisations in Hungary[44]. The law now provides that a business organization may be established having foreign ownership, and that an ownership interest in an existing organization may be acquired by foreigners, without application for any permits. Indeed, foreigners may own 100 percent of Hungarian entities.

In the surveyed CEE countries, the FILs essentially provide a single unified legal framework for the whole economy, similar to Western corporate legal systems. FDI is allowed in all spheres of activity, apart from those sectors of the economy, geographical areas and even capitalizations, which require special authorization[45] or

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[44] Section 4 of the Hungarian FIL states:

(1) A company with foreign participation may participate in the foundation of another company, or found such a company on its own and acquire an interest (share) in an existing company - subject to the limitation of para. (2) herebelow. The provisions of the present Act shall not apply to such companies; with the exception of the provisions of Chapter IV which shall still apply.

(2) A company limited by shares whose majority is in foreign ownership, or is fully foreign-owned, may not acquire a majority (controlling) interest in another company limited by shares.

[45] Banking and insurance are the most frequently mentioned sectors in which special authorization is required, but there are others which are more or less clearly defined, depending on the country. The goal is to protect areas of activity which are considered vulnerable.

FDI in the banking and the insurance sectors is subject to special authorization in each of the surveyed countries.

Under the **Bulgarian** FDI, any company with foreign ownership wishing to conduct business in the banking or insurance sector, or obtain holdings in the banking companies, must obtain authorization. Relevant provisions are given in the new Law on Banks and Crediting.

The situation is quite similar in **Czechoslovakia**. According to the Banking Act, which came into force on February 1, 1992, foreign participation in the Czechoslovak banking sector is allowed if permission is granted. With respect to insurance undertakings, the **CSFR** legislation limits the foreign holding to 45%, and only if this condition is met, may authorization be given.

In **Hungary**, foreign participation in the country's financial institutions is unrestricted as long as it does not exceed 10% of the founding capital. For investments in the banking sector in Hungary, government approval is required if the foreign share exceeds 10%. In addition, a single shareholder may not own more than 25% of a Hungarian financial institution unless the shareholder is the state or another financial institution.

Otherwise, foreign investment is subject to special authorization pursuant to the Act on Banks and Banking Activities of 13 November, 1991. In 1992 there were already one thousand enterprises with foreign participation in the financial sector (banking and insurance), of which 100 were completely foreign-owned.

are state monopolies. Authorization procedures vary in simplicity from one country to another. The body or bodies responsible for assessing applications are clearly identified and the waiting period is no longer than three months. In case of foreign investment in the banking sector, authorization is granted by the central state bank.

The examination of the permit requirement in the three countries clearly reveals the drawbacks of the Bulgarian FIL. The provision, as it is generally stated for all acquisitions of fifty or more percents in a Bulgarian entity, is indisputably unjustified and obsolete. The hazard lies in its general character - it applies to all, not only to acquisition of state enterprises, economic entities. This legislative solution, to leave the door open for a governmental discretion on the subject, is difficult to understand.

C. Authority for a majority interest in the enterprise

It is now established in the three countries that foreign investors may hold up to 100% of the company's capital[46]. This provision was not found at the beginning of the process of openness, but has been considerably debated regarding the importance of allowing foreign investors to own more than 50% of the equity of domestic enterprise. The main argument for the opposite solution was based on the understanding that many foreign firms will not invest anywhere unless they can have a controlling interest, or even exclusive ownership.

Some short-lasting attempts to put a cap on the amount of foreign investment, or, to introduce a minimum level of capital participation to prevent small-scale foreign speculative operations (particularly in Bulgaria, where the former law required a

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[46] See art. 9 para. 2 of the Hungarian FIL; art. 3 para. 3 of the Bulgarian FIL; and Sect. A 21 para. 1 of the Czechoslovak Commercial Code.

minimum of US$50 000), were made in each country. None of them now, however, stipulates limitations in general to the flow of foreign investment.

Notwithstanding the above contention, however, one has to be cautious with the Bulgarian FIL. Although unlimited by any quotas in her/his ownership rights, the foreign investor should be aware of the following intricacies of the law: The interpretation of the FIL shows that as foreign investment is considered a foreign stake in Bulgaria individually or for more than 50% foreign participation in a Bulgarian company[47]. *Per argumentum a contrario*, a foreign stake in a local company of less than 50% is not foreign investment under the meaning of the FIL. This line is reiterated with respect to ownership on immoveables: ownership of immoveables by companies with at least 50 or more per cent foreign participation is considered a foreign investment. Any subsequently accrued interest on the initial investment is considered foreign investment as well.

It is not clear from the law what the legislature's intent was for this distinction. A speculative mind would suggest that it was done to solicit greater foreign participation and to discourage the creation of fictional foreign companies.

This line of distinction poses some impediments along with the privileges it creates for the foreign investor. Thus, prospective buyers and cultivators of farm land should be aware of the fact that they can acquire such land in Bulgaria only through a

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[47] That is the meaning of art. 9 para. 1 of the FIL. (See *Appendix "A"*.) One may rightly conclude that the previous minimum of US$50 000 is now replaced by a requirement of 50% foreign participation. Regrettably, this solution employed by the Bulgarian legislature does not make a good sense. What it does in practice is to deny the foreign stake of less than 50% the status of foreign investment, meaning, among other things, the protection and the other guarantees bestowed to foreign investments. Whatever the legislature's intention, the ambiguity of such a dividing line would only scare away investors, without much benefit for the economy.

company with foreign participation of less than 50%[48].

D. Free access to the management

Although the role of management as a main factor for the successful operation of companies appears to be a fading postulate of the 70s and 80s, for the initial stage of business organization in the CEE it still has an important connotation. One of the principal dimensions in this respect, namely, the appointment of nationals to key positions, has been currently ceding its place to another phenomenon - filling the lower levels of management predominantly with nationals.

Previous FILs indirectly put on hold the effective foreign participation in the management of the enterprise. That result was achieved by imposing a limit on a foreign investment holding of no more than 49 or 50% of the equity. Thus foreign investors were not able to manage the business activities of the joint ventures with no majority representation in the policymaking boards of the enterprise. This is already history in CEE.

In the same vein, another sensitive point for investors - the effect of the "state plans of economic and social development," with centrally-planned production quotas, fixed prices etc. - was resolved by the transformation of the economy into a market-oriented one.

Apart from the impediments raised by the Bulgarian FIL (namely, the minimum of 50% foreign participation in a company in order to acquire farm land etc.) discussed in the preceding section, there are no overt legal obstacles against the foreign investor

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[48] See *Appendix "A"* at art. 5 para. 2. Despite the statement made at art. 3 para. 3 that "the extent of foreign participation in newly-established or existing associations is unlimited", the concrete applications of this rule deviate considerably.

in managing the company's activities. The composition of the management bodies can be freely decided according to equity participation or management contracts. Foreigners may be members of these bodies and chair them. A closer scrutiny on a lower level of management, however, shows a more complicated reality.

Although Bulgaria's foreign-investment legislation, for instance, is fairly straightforward, experience has shown that working with a Bulgarian partner, or simply dealing with other parts of the local legal system, can prove difficult. One of the biggest sources of conflict between partners is staffing: the Western partner often prefers to employ fewer locals than does the Bulgarian partner. Added to this is the problem of the quality of staff hired by the local partner[49].

Certainly, the established business practices and unwritten rules of conduct in the economic sphere will take more time and effort in converting to the western model than the law.

E. Dispute settlement mechanisms

Foreign investors often cite settlement mechanisms as a necessary corollary to their investment activities; such mechanisms are the processes by which disputes are regulated with local partners. The dispute settlement mechanism is viewed by foreign investors as an essential guarantee of their investment, and it is commensurately treated by the host countries. Specific provisions on with regard to these mechanisms may be stipulated in bilateral investment treaties or in the investment agreement.

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[49] *See*, for more details on the disparity between law and business practice in Bulgaria, *"Legal Difficulties"* Doing Business in Eastern Europe (1 July 1993) 2, discussing Asko-Denitsa, a German-Bulgarian joint enterprise in the retail trade has found that some of the staff employed by its partner were unsuitable for the positions for which they were intended.

Another solution to the problem is the membership of the host country in international organisations providing dispute settlement mechanisms, or the adherence of the host country to the international conventions on recognition of foreign arbitral awards.

The new **Bulgarian** FIL does not contain any dispute settlement provisions. Bulgaria, however, is a party to a number of international conventions in that respect[50]. The Bulgarian law gives priority to international agreements over the national law, a principle embedded in the Constitution and the FIL itself[51]. There are no obstacles for including in the investment agreement a clause stipulating foreign arbitration in case of a dispute between the partners. The free will of the parties to the contract allows such an agreement and is enforceable under Bulgarian law.

The new Commercial Code of **Czechoslovakia** has only one article dedicated to dispute settlement, namely, article 760[52]. According to this article, the Code will apply to any disputes between the parties in case of an existing and valid arbitration agreement.

Under the general contract law, the parties may agree in a contract that

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[50] Such as: The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958 - ratified 10 October 1961, United Nations: *Treaty Series*, vol. 220 at 3; The European Convention on International Commercial Arbitration, 21 April 1961 - ratified 13 May 1963, International Institute for the Unification of Private Law: Yearbook 1961/1962 at 409; Convention of Settlement by Arbitration of Civil Law Disputes Resulting from Economic, Scientific and technical Cooperation, Moscow, 26 May 1972 (1974) vol. XII International Legal Materials I at 5 (Washington, D.C.: American Society of International Law, 1962); Convention establishing the Multilateral Investment Guarantee Agency, 11 October 1985, signed 17 June 1991 - ratified on 27 July 1992 (1985) vol. XXIV International Legal Materials at 1605 (Washington, D.C.: American Society of International Law, 1962).

[51] See part 1 (A) of the thesis for a detailed reference on that matter.

[52] Art. 760 of the Commercial Code reads:

"The provisions of this Code on contractual obligations, related to the assertion of a right in court, to judicial proceedings or to a judicial decision shall apply as appropriate to the assertion of a right before arbitrators, to arbitration proceedings, or to an arbitral award, provided they are based on a valid arbitration agreement."

disputes thereunder would be resolved by arbitration either in Czechoslovakia or abroad, except that disputes arising from contracts between state enterprises, or between them and cooperatives, are governed by the Economic Arbitration Act[53]. Arbitration under contracts involving a resident and a non-resident is specifically governed by the provisions of the law entitled Act Relating to Arbitration in International Trade and Enforcement of Awards[54]. In addition, Czechoslovakia has ratified most of the international conventions in that realm[55].

Similarly, the **Hungarian law**[56] requires a written clause on foreign or local arbitration in the deed of association in order to allow a foreign forum to hear and settle a case between local and foreign parties. This explicit prerequisite shows that a prior stipulation of foreign arbitration is necessary. If such a provision is not found in the investment agreement, and there is no a bilateral treaty between the host and the home countries, the foreign investor cannot unilaterally bring the case before a foreign forum.

Hungary is a member of the International Court for the Settlement of Investment Disputes (ICSID). It is also a party to the major international conventions on the same

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[53] Act No. 121/1962.

[54] Act No. 98/1963.

[55] Czechoslovakia is a party to the following conventions: The 1923 Protocol on Arbitration Clauses, ratified 18 September 1931, League of Nations: Treaty Series, vol. 27 at 157; The 1927 Convention for the execution of Foreign Arbitral Awards, ratified 18 September 1931, League of Nations: Treaty Series, vol. 92 at 301. Most recently, on May 13, 1991, Czechoslovakia signed the ICSID Convention, see *supra* note 57.

[56] Section 44 of the Closing Provisions of the Hungarian FIL says:
Either an inland or a foreign regular court or arbitration court may proceed in legal disputes of companies with foreign participation relating to the deed of association, provided this has been stipulated in writing by the founders, respectively members, of the company.

subject[57].

Both Hungary and Czechoslovakia are members of the ICSID. Surprisingly, perhaps, in view of that participation, their respective FILs do not make reference to the International Centre for Settlement of Investment Disputes. The Convention stipulates an automatic application of the arbitration procedure of the ICSID only to disputes concerning expropriation or related matters. For the rest of the investment disputes, the Convention requires an *ad hoc* reference to the Centre for every particular case involving member states[58].

F. Employment provisions

Labour relations and pertinent provisions are of primary interest to prospective foreign investors. Labour law, however, bears the typical characteristics of more than one branch of law. For instance, the employment contract is not entirely left to the free will of the parties, but some administrative requisites prevail. With regard to these specialities, it is expedient to view separately the most salient employment provisions for each of the three countries.

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[57] In addition to the mentioned at *supra* note 126 conventions, Hungary is as well a party to The Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, 18 March 1965, World Bank: ICSID/2 (signed 1 October 1986, entered into force 6 March 1987).

[58] According to The ICSID Convention (art. 25(1)), the jurisdiction of the Centre extends to "any legal dispute arising directly out of an investment, between a Contracting State ... and a national of another Contracting State, which the parties to the dispute consent in writing to submit to the Centre". Without an explicit agreement referring the dispute to the ICSID Centre, even the parties to the Convention are not legally bound to submit the dispute to conciliation or arbitration.

Bulgaria

Bulgarian labour law[59] is not a single unified legal system that applies to both local or foreign employees and national or mixed companies. Special rules apply to joint ventures owned in the larger part by foreign companies, as well as to subsidiaries[60]. Investors here are required to comply with Bulgarian labour regulations on such matters as:

- labour contracts, which must be in written form;
- the maximum duration of working time and the minimum duration of rest periods, including annual leave;
- the minimum wage set for Bulgaria;
- the minimum term of notice for the termination of a labour contract, where required by law, as well as the minimum compensation paid to an employee for the termination of the contract;
- the employers' liability for damages caused by accidents at the workplace or

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[59] The Labour Code was first passed in 1986 and subsequently amended in 1992. It regulates labour relations, collective and individual labour contracts, the rights and the obligations of employees and of the employer on issues such as working time, annual leave, remuneration, professional training, social protection and termination of employment. In November 1992 parliament reviewed the Labour Code and made more than 250 amendments which were effective as of January 1 this year.

[60] Labour relations arising in connection with foreign investments, including investments involving collaboration with local persons, are settled by the *labour contract*. The labour disputes in which a Bulgarian citizen is a party are settled by the Bulgarian courts, and when a foreign citizen is a party - according to the stipulations of the labour contract.

Bulgarian labour laws apply to issues not settled by the labour contract. Foreign employees are not insured under Bulgarian legislation but according to the provisions of their labour contract, either under the Bulgarian system or by continuing provision of social security and other insurance in their country of origin. They must however in any case be insured against temporary or permanent disability by contributions of 20% of the employee's nominal monthly wage by the employer.

Foreign employees must be paid mostly in Leas. Part of a foreign employee's remuneration may, after agreement between the contracting parties, be paid in foreign currency. Foreigners are allowed to exchange Levs for hard currency (up to 70% of their wages).

for an occupational disease; and

- industrial hygiene and labour safety.

joint ventures with less than 49% foreign participation, or with Western capital of less than $100,000, must follow all Bulgarian labour rules, and are subject to the wage-bill tax.

Aspects of the Bulgarian labour code must be followed in contracts with Bulgarian employees; in theory, this is a restriction, but it may actually be of little importance since foreign companies have tended to offer conditions better than the local minimum.

The rules set out in the 1992 FIL apply only to labour relations between a foreign person - sole merchant, branch, agency or a Bulgarian company with foreign participation exceeding 50% - and Bulgarian employees or those of any other nationality[61].

Any labour disputes to which a Bulgarian employee is a party must be referred to a Bulgarian court. In the case of foreign employees, the dispute has to be settled according to the provisions of the contract of employment. The Bulgarian labour and insurance legislation applies to any issues not regulated in the contract.

The 1992 Law introduces some additional protection for foreigners staying longer than six months. The right to establish permanent residence can be revoked by the Minister of Internal Affairs only in the cases envisaged by the law.

Special attention has to be paid in employment contracts to the rules on

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[61] Joint ventures with less than 50% foreign participation are subject to regulations for Bulgarian companies. Bulgarian citizens who are employed have to be insured at the expense of the employer in accordance with Bulgarian legislation, while foreign citizens are obligatorily insured against temporary or permanent disability at the expense of the employers at a rate of 20% of gross monthly remuneration. Other risk insurances are settled in the contract.

dismissing employees and to labour union activities[62].

Czechoslovakia

Czechoslovakian labour relations[63] are governed by the Labour Code (No.65/1965), and its latest amendment Act No.3/1991[64]. In addition, a series of meetings among representatives of the government, trade unions and employers produced a General Agreement on Labour Relations in 1991 and again in 1992. Similar agreements are likely until a stable trade union structure develops. Employment is established on a contract basis either for a definite or an indefinite period of time. A trial period of three months maximum may be specified in the contract. The

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[62] It is strongly recommended that Bulgarian regulations for a notice of dismissal should be avoided because they still bear the signs of a socialist approach, where dismissals were very rare. Companies should be aware that certain negative aspects of Bulgarian business life - political confrontation, the reallocation of labour and management resources for political and not professional reasons, and the dominant influence of labour unions - could come to characterize their joint ventures. Overpoliticized labour unionist activities may become a substantial hindrance for foreign investors in this country. Wages paid in joint ventures are 30-50% higher than those in local companies and tend to rise very fast.

[63] The key laws on employment in Czechoslovakia are:

The Labour Code (451/1992). Codifies recent amendments to the main labour law which has been in effect since January 1, 1966. Defines all work categories and conditions.

The Employment Law of the CSFR (450/1992). Codifies recent amendments to the main employment law which has been in effect since February 1, 1991. Defines the employment policy of the state and requalification conditions. Sets procedures to be followed by employers.

Law on Social Security. In effect from January 1, 1993. Defines new social security rates which firms will be obliged to contribute to: employers will be required to pay social security contributions at a rate of 27% while employees will be required to pay 9%.

There is of course a fundamental debate, as there is in other countries, about the extent to which employment law should constrain companies in their relations with employees and the extent to which these matters should be left to the market in the new legislation.

There is however a desperate need to introduce legal certainty into Czech and Slovak employment law, particularly to define the rights and duties of employers of private companies and joint-ventures, which are inadequately covered by the present rules, but also to update and modernise the relationship between state-owned enterprises and their employees.

[64] See for an in-depth discussion of the labour law of Czechoslovakia, Hager, M., *"Constructing a New Liberal Capitalism: Czechoslovakian Labour Law in Transition"* (1992) 7 The American University Journal of International Law and Policy 503.

employment contract can be terminated by an agreement with the employee or by giving notice two months in advance by both employer and employee.

Hungary

The Hungarian FIL contains specific references with regard to the labour relations[65] of the mixed or fully owned companies by foreigners[66]. Once registered in Hungary, a company with foreign participation is regarded as an Hungarian company in view of the national treatment clause and is therefore subject to the general rules on employment in Hungary.

On 1 July 1992, Hungary's new Labour Code (Act XXII of 1992) came into force. It is a comprehensive law, which covers almost every aspect of employment law including trade union law, data protection, racial and sexual equality, remuneration, terms of employment and dispute procedures.

Contrary to the pre-existing law, the 1992 law permits parties to deviate from certain obligations, thus allowing for individual negotiations between workers and

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[65] *See* Bierman, L., *"The New Hungarian Labour Law: A Model for Modern Dispute Resolution"* (1992) 7 The American University Journal of International Law and Policy 617.

[66] The following sections of the Hungarian FIL (See *Appendix "C"*) deal with the labour relations:
Section 28
(1) The labour-law status of the employees shall be governed by the Code of Labour, further - within the framework of the former - the deed of association (company statutes) and the employment contract; their liability shall be governed by the CA (*Act on Economic Associations*) and the Code of Labour.
(2) The trade union rights are governed by the Code of Labour and other legal regulations issued on the strength of the latter.
Section 29
The statutory rules relating to the regulation of wages and the material (financial) interest system of those in leading position (executive officers) shall only apply to such companies in which the size of the foreign stake is lower than 20 percent, respectively five million forints. (*Emphasis added*).

employees. The Code requires that employees must receive an employment contract[67]. It is explicitly stated, that employment relations in the mixed or foreign companies are regulated by the Hungarian legislation. In other words, it is clear that the Labour Code is given an overriding power, that is, the stipulations of the Code or the CA cannot be circumvented by the employment contract. The Hungarian government has recently signed the long negotiated "Enterprise Pact" with the employers' federation and with the majority of the trade unions[68].

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[67] If employment is for more than 5 days, the contract must be in writing; the employment contract cannot be less advantageous to the employee than the collective one; it can be concluded for a definite (not exceeding 5 years) or an indefinite period, and trial periods (normally 30 days) can be included in the contract.

[68] See *"Enterprise Pact signed"* Finance East Europe 4 (18 March 1993) (Financial Times Business Information Ltd.). The main provisions of the pact include:

▪ for six months employees will be allowed to choose the privatization path followed by their enterprise; if the decision is not made in that time, it will revert to the authorities;

▪ ten per cent of the shares of a privatized company's shares will be given to employees for free, provided no-one receives more than a year's average wages; this limit can be increased if the enterprise has paid off its dues to the state budget;

▪ the terms for employees to lease an enterprise's assets will be eased; in particular, in areas of high unemployment the employees will only have to find capital equal to 10 per cent of the enterprises' official foundation capital;

▪ employees of privatized firms will have a say in their management;

▪ financial restructuring of state banks will make it easier to restructure enterprises' debt;

▪ from July 1993, dividends (payable to the budget) will be based on profits not assets; one third of the profit will go to the budget, one third for re-investment, and one third for the employees; there will be no popiwek (tax on wage increases in state firms);

▪ a trilateral commission will monitor the economy; one of its guiding principles will be that consumption is to rise at half the rate of production increases;

▪ a Workers' Payments Guarantee Fund will be set up to maintain payments if an enterprise fails;

▪ labour law will be updated to stress collective agreements, and increase health protection for employees; and

▪ enterprises will be required to set up social payments funds.

2. Essential Investment Issues

A. Property rights: to own, lease or use land and other immoveables[69]

Acquisition of land and immoveables by local citizens or joint ventures, under the communist legislation, was generally not allowed. Therefore, this card was frequently played by the local partner whose participation in the joint venture was characterized by intangibles. It required, though, special concessions from the government and was rightly considered by the Western partner as one of the major impediments to the investment project.

Presently, property rights in the three countries are elevated to the realm of the Western standards of regulation. Ownership, rental and leasing of real estate and land by foreign investors render their investment more attractive in the long term, and it is more likely that the profits they make will not be taken out of the country. The question of the property rights of foreigners is of double significance: First, such rights are of fundamental importance for the establishment and the operation of the respective business. Second, they provide the opportunity for the foreign investor to operate with the acquired land or real estate for speculative purposes.

Property rights, on the other hand, on national assets such as land or real estate are subject to the protection of most governments, whereas direct business investment is always readily accepted. The compromise between these trends, varying slightly, is found in the respective FILs of the three countries, where leasing and rental by foreigners is altogether allowed but with some restrictions.

In general, the FILs make a distinction between ownership rights for the individual purposes of the foreign investor, and the acquisition of real estate or land for

[69] For the state of affairs before 1989, see *supra* note 1 at 69-72.

the carrying out of business projects. In the first case, all legislations put some restrictions on foreign investment.

Bulgaria

In Bulgaria, companies with majority foreign participation, and the subsidiaries of foreign companies, can buy non-agricultural land and the Council of Ministers may allow these companies to build and use real estate in Bulgarian territory in order to perform their economic activities, although such purchases of real estate for business purposes require a licence. The price of real estate is freely negotiated between the parties[70].

Home ownership by a foreigner is allowed on condition that the house is built by the owner[71]. The requirement for a building permit is simply an administrative hurdle. The Bulgarian authorities prefer to lease rather than to sell real estate. Companies in which the foreign holding does not exceed 50 percent can buy farm land on the same legal basis as Bulgarian companies.

Leasing of farm land or forest land is subject to a special licence[72].

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[70] A real estate market is developing in Bulgaria and 35 estate agencies had already been set up as limited liability companies by the end of 1991. The price of land varies from up to Levs 10.000 (at the present exchange rate approx. US$ 300) per square metre for prime office locations in central Sofia to Levs 2.000 (approx. US$ 60) per square metre for undeveloped land in outlying boroughs of the city and Levs 1.000 per square metre and less for land in the countryside.

[71] The Bulgarian FIL stipulates at art.5 (1) the following: "A foreign national shall obtain title of ownership on buildings and restricted ownership rights on real estate. The foreign national shall acquire a home only through exercising the right to build or under regulations determined by law."

[72] In February 1991, the Parliament adopted an Act on the Ownership and Use of Agricultural Land, which came into force on 1 March 1991. This Law was extended in April 1992 by the Agriculture Land Tenure Act (*State Gazette* No. 28, 3 April 1992), which was further amended in May 1992 and June 1992 (*State Gazette* No. 46/1992).

Czechoslovakia

Art. 14 of Act No.100, enacted April 1990[73], serves as the constitutional basis for the Czechoslovakian foreign investment regime. This article states that foreign individuals and legal persons may acquire property, property rights and enterprises under the conditions prescribed by law.

According to the amendment to the Law on Foreign Currency (passed in November 1990) of April 22, 1992, a foreign legal entity can buy real estate for convertible currencies in Czechoslovakia[74].

In Czechoslovakia a foreigner may not own a home. Companies incorporated under the Czechoslovakian law may own land. Leasing is subject to the issuance of a special licence by the Ministry of Agriculture.

The new Commercial Code is not explicit on the question of property rights of foreigners, but some references are found in art. 24 (3)[75].

Hungary

Act XXIV on "Investments of Foreigners in Hungary" (FIL) entitles companies with foreign participation to acquire ownership of, and other rights to, real estate,

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[73] Law on Private Enterprise by Citizens, *Parker School...*, vol. 1, Release No. 2 (New York: Transnational Juris, December 1990).

[74] Before the split of the country, 100% foreign-owned "joint-ventures" were considered as Czechoslovak legal persons, which therefore entitled them to trade in real estate. It is however not sure whether this situation will still be modified after the country's dissolution.

[75] "(3) As regards matters stipulated in paragraph 1, foreign persons shall have the same rights and obligations as Czechoslovak persons."

necessitated by their economic activities as defined in the Deed of Association. The law prevents the purchase of real estate for speculation by allowing the acquisition of real estate only for certain business activities of any interested company. The buying and selling of real estate as part of normal business activity is authorised only with special permission.

The purchase of land or real estate in Hungary by a foreign natural or legal person is subject to the authorization of the Ministry of Finance. No authorization is required, however, when the purchase of real estate is for business purposes - buildings, factories, warehouses and houses on the land[76]. An insignificant foreign stake of 1% in a domestic company is not considered foreign interest and such companies are free from prohibitions on land ownership.

Real estate rental is one of the main ways of setting up businesses in a foreign country. One of the paradoxes of the new market economies in the region is the skyrocketing rents of different space, such as industrial, office, and housing[77]. Two reasons may account for this phenomenon: First, there is limited free space, due to the unfinished privatization and restitution, and the strong demand for such space from mushrooming businesses. The second reason is the obvious desire of the newly restituted owners to cash in on the moment as much as they can. Accordingly, a new class of landlords is blossoming throughout CEE.

Therefore, it is still recommended that a foreign investor find a local partner

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[76] Sect. 19 of the Hungarian FIL states that "The Company shall be entitled to acquire property rights (ownership) and other rights on the real estate required for its economic activities defined in the deed of association (company statutes)."

[77] It is often reported that the rents in the capital cities of the three countries are quite higher compared with those of New York or London, considered to be expensive places to do business.

whose share in the joint venture is the required intangible factor. Otherwise, the significant tax burdens coming up in 1994, coupled with the exorbitant rents could easily cripple the investment endeavour.

B. Access to local markets and export

To begin with, this is an ambivalent area, where law has traditionally had a very limited role. Foreign investors' access to the local markets poses two sets of problems: First, it is the freedom of foreign companies to import the necessary components and materials and export their product. Second, it is the access to local supplies and unimpeded participation in the local market.

While marketing objectives had been for many years of fundamental concern for a prospective foreign investor, the situation has now been rectified throughout the region. Foreign trade, previously under the exclusive authority of the government, has been freed from any substantial restriction except for the requisite, prior application for a licence.

The problem with access to the local market is now shaped by the practical conditions of supplying raw materials produced locally or imported. The law provides for national treatment of foreign companies, meaning that it does not discriminate between domestic companies and companies with foreign participation. The common case of a foreign company operating in a niche unsaturated by local production, eliminates in practice the question of competition for market share. As prosaic as it may sound for the remaining cases though, the local connections still reign when it comes to provide the scarce supplies in demand.

One of the immediate difficulties experienced by foreign investors is the lack of a developed infrastructure[78]. Outside the capital cities of the three countries everything operates at a considerably slower pace. The disparity between the communication systems of the big cities and the countryside is intolerable by Western standards. A wholesale distribution network is still in a rudimentary state, except for a few large cities.

C. Expropriation and compensation

Expropriation or nationalization of enterprises was one of the major, historically nurtured, concerns of foreign investors. Therefore it has been taken into consideration by the respective legislatures, and adequate guarantees were given within feasible limits. Thus only exceptionally important needs of the state that cannot be met by other means can lead to the expropriation of equity to a foreign investor. Expropriation of equity can be done by law only.

Bulgaria

Both the 1991 and 1992 Bulgarian Laws explicitly regulated the protection of foreign investment. According to the 1991 Law, foreign investment could not be the subject of administrative confiscation by acts that could not be appealed.

The same trend was upheld in the 1992 FIL. Immovable property could not be the subject of expropriation except for important state purposes that could not otherwise be met. The compensation was to be set by mutual agreement. In the absence of agreement within 90 days, each party could refer the matter to the district

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[78] Most of the foreign grants financed by the World Bank, the EBDR or under the *Phare Programme* of the EEC, target the development of the infrastructure in the former communist states in order to create an adequate to the West business environment.

court. Any monetary compensation was to be paid forthwith upon the expropriation becoming executable and was freely transferable abroad. The state shall not take over any expropriated property before effecting the total payment of the established compensation.

Priority is given to indemnity in kind, and only if so chosen by the investor, can it be monetary. The importance the legislature gives to the issue of expropriation is proven by the fact that the aforementioned order, in all its parts, can be appealed directly to the Supreme Court. Eventual expropriation of the real property of a foreign person is to be monetarily compensated at the market price of the equity, as of the date of expropriation. The investor further has the guarantee that her/his estate can be taken in possession only after full compensation has been. The compensation received can be freely exchanged into foreign currency and transferred abroad.

Czechoslovakia

Investments in Czechoslovakia are protected against expropriation by the Constitution, the Commercial Code, and bilateral agreements dealing with the promotion and protection of investments[79]. According to these laws, expropriation may be accomplished, or ownership rights curtailed, only in compliance with the relevant laws that provide for compensation. The compensation paid to a foreign investor in such cases is freely transferable abroad and in the foreign currency with which the foreign partner has contributed his share to the basic capital of the enterprise.

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[79] Bilateral agreements on the protection and promotion of investment have been signed by Czechoslovakia with the following countries: Australia, Austria, Benelux, Canada, China, Denmark, Finland, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Switzerland, Sweden, Thailand, the US and the UK. See Investment Laws of the World vols. 1-3 (New York: Oceana 1972).

Section 25 of the **Czechoslovakian** Commercial Code focuses on the legal protection of foreign property interests. Specifically, this section provides that property owned by foreigners may be removed from their control, or their property rights restricted, only where there exists a legal basis and a public interest for so doing. With regard to compensation for such expropriatory measures, the Commercial Code goes beyond the protection afforded by either art. 11 of the 1991 Charter of Fundamental Rights and Freedoms, and art. 9 of the April 1990 Act. Under the Commercial Code, compensation must be prompt and must correspond to the actual value of the property in a freely transferable foreign currency. (Czechoslovakia acceded to the MIGA on September 13, 1990.)[80]

The **Hungarian** FIL pays equal attention to the issue of expropriation of foreign investments, thus basically repeating the provisions found in the other two laws[81].

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[80] No recent interpretations of the meaning and the scope of the Czechoslovak law on expropriation are found. The general Commentary of the FIL, made by the Czechoslovak Chamber of Commerce and Industry, 1989, is, however, still operative. It states on the topic:

"Under the Czechoslovak law, such measure [expropriation or restriction of property rights] can be adopted only for serious reasons of general interest (for instance housing construction, creation of hygienic, safety and other protective zones, etc.). A property may be expropriated only if the same goal cannot be achieved by another measure [or] by a mere restriction of the right of property. The expropriation procedures are conducted by the Construction Authority, and are governed by the Administrative Procedures Act. Expropriation can be decreed only for compensation in money... Apart form the reasons stated, property may be also expropriated for important needs of air transport, mining purposes, road construction, construction of power stations and distribution of electric power, etc. Fair compensation for expropriated property will be calculated in accordance with the principles in specific rules of law and rates therein contained...*See Appendix "B"*.

[81] Section 1 of the General Provisions of the Hungarian FIL states that:

(1) The investments of foreigners in Hungary shall enjoy full protection and safety.

(2) The foreign investor shall be promptly indemnified for any damage arising from any possible measure affecting his property, such as nationalization, expropriation or any measure involving a similar legal effect. Compensation shall be paid at actual value.

(3) The State shall see to it that indemnification be effected by that state-administrative body which has issued the given measure. In case of infringement of law revision of the decision of the state-administrative body may be requested from the Court.

(4) The amount of compensation shall be paid to the person entitled to it in the currency of the investment.

D. Repatriation of profits and capital

Generally, FILs of the three countries do not require any permit for the liquidation in whole or in part of a foreign investment, nor for the transfer of shares therein to a third party, foreign or local. Repatriation rights in respect of foreign equity investments are protected. All proceeds, being the capital gains realized from sales of shares, or profits or dividends distributed to foreign shareholders or partners, are now freely repatriable.

Bulgaria

The Bulgarian law[82] provides that upon payment of all applicable taxes, the foreign investor can exchange the profits of his enterprise and transfer these monies abroad. The same is valid for the value of a liquidated company or a share in such, in case of the sale of the business, or in the case of sums available after execution of a claim by the investor. Under the law, local currency (lev) profits can be converted for repatriation by buying foreign exchange from a licensed commercial bank at the current market rate. The same applies to salaries and also to any portion of the foreign partner's lev liquidation quota that exceeds the equivalent of the original hard-currency

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[82] The Bulgarian FIL contains a part entitled "TRANSFER OF INCOMES AND COMPENSATIONS" which stipulates that:

"Art. 13 (1) A foreign national shall have the right to buy foreign currency from the Bulgarian banks in the cases when this is permitted for local persons, and in the following cases:

1. the investment profit in the lev equivalent;
2. compensation on expropriation of the subject of investment for state purposes;
3. liquidation quota on termination of investment;
4. the sale price of the object of investment;
5. the sum in lev obtained by virtue of the compulsory execution for claims in currency under art. 12.

(2) A foreign national shall have the right to transfer abroad the currency obtained on verifying that the respective taxes have been paid."

stake (the latter is exchanged by the Bulgarian National Bank - BNB)[83].

Foreign employees of future joint ventures with a foreign stake of less than 50% are not able to convert and repatriate the salaries that they must, by law, receive in lev. This may be an omission made by the authors of the law that could be rectified soon.

Czechoslovakia

The former Czechoslovakian State Bank and the former Federal Ministry of Finance decided at the end of February 1991 that returns on investment may legitimately form part of an individual's or an enterprise's reward for economic activity and may therefore be transferred abroad, at will, in the currency of the investor's choice[84].

When applying for the transfer of profits, a legal person is required to produce evidence that the sum in question represents the return on the foreign investor's investment. This can be done by reference to a yearly financial statement, yearly bank account statement, register of holders of bonds, or by reference to other such documents.

Profits may be transferred to a foreign country, or into an account belonging to the foreign investor, held at a Czech or Slovak bank and denominated in foreign

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[83] All salaries are paid in lev, but foreigners employed in Bulgaria have the right to purchase foreign currency to the value of up to 70% of their monthly salary under local law. Joint ventures with a majority foreign share and subsidiaries are not subject to the wage-bill tax, provided that foreign participation here exceeds $100,000.

[84] Returns on investment (further referred to as profits) are understood here as monetary sums gained as the result of investment, particularly profits from entrepreneurial activity, interest payment, capital growth, and returns on bonds and payments concerning intellectual property.

currency[85].

The new Commercial Code of Czechoslovakia does not mention the issue of repatriation of earnings or other funds connected to foreigners' investments. Except for the equal treatment of local and foreign companies, the Code has no specific provisions on repatriation of profits[86].

The concrete rules on transfer of earnings, proceeds or other foreign exchange transactions, are now found in the new Foreign Exchange Act[87]. Under the law, there are two categories of participants in foreign exchange transactions: foreign exchange residents who are "physical persons residing in this country and juristic persons with their business operations in this country"[88], and foreign exchange non-residents who are not required to report and register but are stipulated in a pertinent Act[89]. Contrary to the previous FIL, the present law does not refer to the particular transfer or repatriation of funds, but in a general manner stipulates all transactions that local and foreign

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[85] The transfer of funds, or of foreign exchange counter-value, to an account may be carried out only with a foreign exchange authorization from the central bank. This authorization will be issued if the foreign investor can demonstrate that the sum in question represents a return on investment. Interest payments accruing from funds deposited in such an account are not considered a return on investment.

[86] Conversely, the previous FIL provided at art. 20 that a foreign participant may freely repatriate his portion of the proceeds of the winding up, liquidation or sale of shares of a joint venture up to the amount and in the currency in which his contribution to the joint venture was made. Similar specific rules were implemented with regard to persons employed by a joint venture whose domicile was abroad.

[87] The Federal Assembly of the Czech and Slovak Federal Republic has adopted the new Foreign Exchange Act No. 528/1990 of the *Collection of Laws* on 28 November 1990 which was amended and modified by the Act No. 228/1992 (*Collection of Laws*, 22 April 1992).

[88] *Id.* at art. 5(1) in connection with Act No. 135/1982 of the *Collection of Laws*, on reporting and registering the residence of citizens.

[89] *Id.* at art. 5 (2) in connection with Act No. 123/1992 of the *Collection of Laws*, on the residence of foreigners on the territory of the Czech and Slovak Federal Republic.

persons, physical or juridical, may conclude. Despite the merits of the previous approach, such as exclusivity and explicitness of the provisions on repatriation of funds, the new law is preferable for the clarity it brings, and for its scope of application to all pertinent relations of local and foreign persons.

The important provision for foreign investors is art. 5(3) of the Act, avoiding any difference between physical and juridical persons for the purposes of foreign exchange transactions in connection with the business activity[90]. Of some practical interest to the foreign employees of transnational entities may be the provision of art. 17 of the Act which makes compulsory the purchase of local currency in certain events compulsory[91].

For the purposes of the Foreign Exchange Law, legal entities, including enterprises established under the provisions for foreign investment, are required to surrender all of their foreign exchange earnings to the local banks against local currency at the official declared rate, irrespective of whether such earnings are in cash or through bank accounts[92]. On the other hand, such entities are entitled to purchase foreign exchange on the market, without a permit, to meet their operational needs,

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[90] *Id.* at art. 5 (3): "Rights and obligations of foreign exchange residents - juristic persons shall be also applicable to foreign exchange residents, who are physical persons - businessmen 3a), in the course of their business activity"

3a) Art. 2, para. 2, of Act No. 513/1991 of the Collection of Laws, Commercial Code.6

[91] *Id.* at art. 17 (1):
A foreign exchange resident - physical person is obliged to offer his foreign exchange resources exceeding the equivalent value of K5.000 to a foreign exchange financial institution for purchase of Czechoslovak currency, or to deposit them in a foreign exchange account opened with a foreign exchange financial institution, both within the period stipulated in paragraph 3. The foreign exchange financial institution is obliged to inform the foreign exchange resident upon his request what sum in a given foreign currency is equivalent to K 5.000.

[92] *Id.* at art. 11 (1).

including servicing of previously approved foreign loans. Therefore, such entities are no longer restricted to their foreign exchange earnings to meet their foreign exchange needs. The State Bank of Czechoslovakia, for this purpose, guarantees the availability of foreign exchange.

Hard currency obtained from exports or other transactions must be sold to the State Bank at the prevailing exchange rate. Hard-currency accounts with the State Bank can be opened only if the firm has more than $50 million in annual export volume, and its exports are larger than imports. This rule does not apply to organizations involved exclusively in international trade.

The rules for transfer of profits and capital are based on bilateral investment promotion and protection agreements, and on the Foreign Exchange Act[93].

Hungary

The Hungarian law[94] guarantees the remittance of profits abroad and repatriation of capital in the currency of the initial investment (sect. 32(1)). Thus profits earned in the local currency (forints) could be freely converted at the official rate of

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[93] Foreign investors are allowed to transfer abroad foreign exchange resources representing the foreign exchange equivalent of the revenue from their investments, including business profits, interests, capital increments, revenues from securities, and fees for intellectual property rights. However, banks require evidence of the origin of these funds. Foreign payment documents, foreign securities or foreign currency deposits books can be transferred or exported abroad without a foreign exchange license.

[94] The Act XXIV of 1988 (the Hungarian FIL) states the following:
"Section 32
(1) Any share due to the foreigner from the profit of the Company, further any amount due to the foreigner in the case of termination of the Company or the assignment (alienation) of the foreign share - completely or partly - shall be freely transferable abroad upon the relative instruction by the foreigner, to this effect in the currency of the investment - provided the Company possesses the proper cover.
(2) In the case of the termination of the Company, the commitments charging the foreigner must be met before such transfer can be made.

exchange. In addition, the Hungarian FIL provides that foreigners who are senior officials or managers of an association, and foreign employees, may "freely transfer" fifty percent of their taxed earnings from the association, which has been paid into the association's bank account, "in the currency of the state in which they are permanently resident."[95]

The rules concerning the repatriation of profits and capital by foreign investors have become more liberal[96]. Investments made in-kind by foreigners, as well as profits or dividends (whether earned in forints or otherwise), used by foreign investors to increase the registered capital of the enterprise, are treated as having been made in the currency of the state where the foreigner has his registered seat or permanent residence. To repatriate, the investor must have sufficient forint funds to cover the transfer. An investor's share of the proceeds upon liquidation and the amount owed due to a reduction in the firm's capital can also be repatriated freely in the currency of the original investment.

The Foreign Investment Act guarantees protection for foreign investment in Hungary. The investor will be compensated in foreign currency for expropriation or measures with similar legal consequences. The Foreign Investment Act also guarantees the repatriation of dividends, profits, and any distributions upon dissolution

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[95] *Id.* at *Section 33*

The foreign executive officers, managing members, members of the supervisory board and the foreign employees of the Company may freely transfer abroad, in the currency of the country of their permanent domicile, fifty percent of their after-tax incomes received from the Company and paid to the Company's bank."

Foreign employees may transfer 50% of their taxable income in hard currency to their country of origin provided that the conversion of Forints in the foreign currency is made by the bank where the company keeps its business account.

[96] Act No. XCVIII/1990 amended the FIL. For the amended version of the FIL in English, see *Newsletter* No. 1/1991 of the Ministry of International Economic Relations.

of a company. These payments can be transferred into foreign currency through the Hungarian National Bank at its daily exchange rate. However, the transfer of profits and dissolution of distributions is guaranteed only after all obligations to third parties have been discharged. Strangely, executives and employees cannot repatriate more than fifty percent of their after-tax income. While Hungary has an obvious interest in the retention of earnings, it is difficult to conceive why employees and shareholders are subject to different treatment.

3. Financial Dimensions of FDI

A. Banking and finance

Bulgaria

However slow, tedious, and contradictory the process may be in Bulgaria, the legislation needed for reform in the banking sector is developing. This sector is directly influenced by the Bulgarian National (central) Bank Act and currently by the Banks and Lending Act[97]. In 1991, the Bulgarian National Bank (BNB) tried to reorient its activities toward modern centralized banking. The monetary policy carried out by the BNB is in compliance with the economic policy of the transition period and is based on the government's stabilization program[98].

Foreign investment procedures in the banking sector are still murky. The Bulgarian National Bank (BNB) has six months to rule in the case of a proposed foreign-owned bank, and three months when a foreign company is proposing to acquire an interest in the foreign bank[99].

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[97] Published in *State Gazette* No. 25/ 1992, effective as of April 1, 1992.

[98] *See* Minkov, P., *"Banks and banking reform in Bulgaria"* (1993) 29 Russian & East European Finance & Trade 22-41. The organization of the currency market in Bulgaria was connected with the necessity of increasing the Bulgarian levs' (BGL) role as a national currency and of facilitating and speeding up the turnover of foreign means of payment. Bulgaria's debt amounts to about 11 billion, and about 80% is owed to private creditors. The development of a debt-equity conversion program as an element of the privatization process is one of the real opportunities to reduce the burden of external debt servicing.

[99] Foreign persons can invest in Bulgaria without permission, with the exception, among other things, of investments in the banking and insurance sectors. Investments in the banking sector are always subject to a licence, granted by the Bulgarian National Bank.

In the beginning of 1991, the Bulgarian National Bank approved the opening of the First Balkan American bank. Since then other foreign banks have started activities in Bulgaria and many of the new commercial banks have a foreign shareholder. Examples are the Luxemburgish Bemobank's shareholding in the new Sirbank and the 33% holding of Swiss and Austrian banks in the "Alternative 2000" bank.

The total capital of Bulgarian commercial banks only amounts to Levs 2 billion (approx. US$ 70 million), which would allow foreign investors to buy up these banks with a minimum

Czechoslovakia

The Czechoslovakian banking system[100] has been undergoing a complete overhaul in order to better prepare for the market economy[101]. Financial reforms have converted the existing commercial and retail banking operations of the State Bank of Czechoslovakia (the former central bank) into separate commercial and savings banks, and reduced the state bank's role in this area to the administration of government credit regulations and guidelines. In January 1993 the Czech National Bank was set up as the central bank of the Czech Republic. The Law on the Czech National Bank gives the state bank autonomy with regards to monetary policy and currency stability, and limits its obligations as regards the financing of government deficits. Monetary policy and the instruments used to conduct it are determined by the central bank's management body (the bank board, headed by the bank's governor)[102].

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investment. Therefore the Governor of the Bulgarian National Bank considers that it is too early to liberalise foreign investment in the banking sector. The Banking and Lending Act of February 1992 therefore only allows foreign investors to hold up to 5% of a bank's equity. Above that limit, the National Bank's approval is required.

[100] In December 1991, the former Czechoslovakian Parliament passed two new banking laws, one on commercial banks and one on the operation of the central bank . All six of the Czech and Slovak Republics state-owned banks have been privatised during the large-scale privatisation in 1993. Under guidelines laid down by the Central Bank, foreign participation in state-owned banks would be limited to 25%, with no single bank being allowed to hold more than 10%.

All banks are subject to the supervision of the Central Banks of the Czech and Slovak Republics respectively.

[101] Law on Banking (21/1992). In effect from February 1, 1992. The law defines bank activities; authorization procedures and criteria for both domestic and foreign banks; documentation; and bank accounting.

[102] Several state-owned banks (Komercni banka, Vseobecna uverova banka, Investicni banka, ivnostenska banka) have been included in the first wave of privatisation, offering their assets for sale under the voucher system. The state, however, intends to retain a 43-45% stake in the largest banks. Although no banking institution is engaged purely in extending long-term loans, Investicni banka is the most active domestic institution in this regard. Owing to the government's pursuit of a tight monetary policy and the resultant liquidity squeeze faced by domestic financial institutions, much of the demand for medium- and long-term credit financing

The development of capital markets is still in its infancy. Fourteen commercial banks and five brokerage firms opened a new stock exchange in Prague in January 1993. Total foreign participation is subject to a maximum of 30% of the Prague exchange's capital. Founding capital totals $188 m. The exchange will operate fully from April 1993 with 40-50 brokerage firms trading in local stocks.

Hungary

Hungarian Law 69 of 1991 on Banks and Financial Institutions lays the groundwork for achieving the policy goal of reducing the state's equity stakes in the four largest commercial banks (Budapest Bank, Hungarian Credit Bank, Hungarian Foreign Trade Bank and Commercial and Credit Bank) to 25% by 1997[103]. Non-financial institutions will also be obliged to adhere to the 25% equity-share limit. The 1991 legislation specifies a minimum capital requirement of Ft1 billion in order to establish a commercial bank, Ft500m in the case of a specialised financial institution and Ft100m for the establishment of a savings bank.

With the establishment of a two-tiered banking system in 1987, the National Bank of Hungary (NBH - the central bank) officially withdrew from commercial banking. The "Big Three" commercial banks - the Hungarian Credit Bank (Magyar Hitel Bank), the Commercial and Credit Bank (Kereskedelmi Bank) and Budapest Bank - evolved

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is met by external sources such as the World Bank. Other external sources for financing include investment funds such as the US-Czechoslovakia Enterprise Fund, EC funds for environmental projects and the European Bank for Reconstruction and Development (EBRD).

[103] *See "Sources of Capital"*, Financing Foreign Operations (1May 1993) 4, (edition of The Economist Intelligence Unit). The 1991 banking law also states that banks must establish reserves of 20% against "below average" debts, 50% against "dubious" debts and 100% for "bad" debts. In order to cushion the negative effect this new requirement will have on bank profitability, the state has pledged to guarantee 50% of the inherited bad debts of the Hungarian Credit Bank, Budapest Bank and the Commercial and Credit Bank (ie the Big Three).

from the former commercial department of the NBH and were set up as joint-stock companies, with the NBH holding a majority of the shares.

Although it was hoped that these newly formed banks would operate on a commercial basis, the NBH has maintained the final say in several key areas, such as the setting of the banks' interest rates. The fact that the banks inherited the NBH's burdensome debt has also served to further constrain their activities and development[104].

The Central European International Bank (CIB), established in 1980 as Eastern Europe's first off-shore financial institution, is authorised to conduct foreign exchange operations of any kind, both within and outside Hungary's borders. In 1988 the CIB set up the Central European Credit Bank as a subsidiary, to operate as an onshore forint bank. This enabled the CIB to gain access to the domestic forint market.

Foreign banks have been active in Hungary since 1987, and the government continues to encourage their establishment, with the hope that their presence will lead to improved and modernised banking services across the board. Joint ventures with domestic partners are preferred to the formation of wholly foreign-owned branches, though foreign banks have been allowed to purchase small Hungarian banks. Acquisition of any of the country's larger banks is not permitted. In an effort to diversify the sources of financing available in Hungary and to promote the modernisation of the economy, several new credit instruments were introduced in 1990, including commercial paper and Treasury bills, which have been used with increasing frequency

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[104] In addition, the managers of the new commercial banks, as former employees of the NBH, still tend to view one another as colleagues rather than competitors. And relationships between bankers and clients, who often sit on the same companies' boards, tend to take precedence over commercial considerations. To a large extent, priority is still given to bailing out loss-making enterprises rather than financing innovative commercial activities.

over the course of 1991 and 1992.

Regulations governing convertible currency held locally were liberalised in 1991. Foreign currency may be held locally by both residents and non-residents, but foreign-currency accounts must be kept in convertible currencies. Accounts held in non-convertible currencies prior to January 1991 could be exchanged into forint accounts. It should be noted, however, that there are a number of inconsistencies in the enforcement of current regulations[105].

Hungarian-registered firms also need Ministry of Finance approval to hold foreign-currency accounts abroad, and such permission is becoming more difficult to obtain. All non-residents - private individuals as well as foreign firms conducting business in Hungary without the benefit of local presence - may open accounts in which they deposit forints derived from the sale of their goods or services in the country. Companies may use these accounts to pay for their expenses in Hungary (eg lodging, transport and entertainment) or to buy Hungarian goods for export. Once the forints have been deposited, though, they may not be converted into any foreign currency nor transferred to any foreign bank. Although it is not yet certain, the latter restriction may be removed with the implementation of the pending foreign exchange code.

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[105] Since 1990, Hungarian citizens have been able to deposit an unlimited amount of convertible currency in accounts that are held locally without declaring where they received this currency, because the current legal restrictions are not strictly enforced. Current regulations set a $350 annual limit (tourist allowance) on the amount of hard currency that Hungarian citizens are legally allowed to possess. Residents may not maintain foreign-currency accounts abroad without special approval from the Ministry of Finance. Amendments in the Foreign Exchange Code do not envisage any change in these regulations in the near future.

B. Tax burden and incentives

Unfortunately, the era of favourable fiscal treatment of foreign entities in the three countries is disappearing. Host countries are undertaking a different approach, by reducing tax rebates and abolishing the automatic tax holidays for new foreign investment projects. Fiscal incentives are being awarded more selectively on a basis of mutual interest. This approach is also designed to ensure that domestic enterprises are not placed at a competitive disadvantage *vis-a-vis* their foreign counterparts. This new approach is mostly due to the enrooted domestic entrepreneurship which has already its own, protectionist say in national politics. This trend, however, may in turn be harmful to the local economies, because the countries of CEE have mainly relied on fiscal, as opposed to financial, incentives to attract FDI. A reasonable fiscal regime will keep the interest of foreign investors alive, whereas onerous tax burdens could disenchant investors.

Finally, the general business climate is the principal element. The improvement of the business environment throughout the region accounts for the governments' decision to cease offering tax incentives to foreign investors by the end of 1993. Further analysis of the fiscal policies of the surveyed countries will illuminate this process.

Bulgaria

In comparison with its Central and East European neighbours, Bulgaria[106] has

[106] There is no uniform legal act regulating taxation, adopted by Parliament, but taxation issues have been resolved by ordinances, decrees and other regulations. Since the private sector has long suffered restrictions, there are separate tax systems for legal and natural persons, regulated by various legal acts. The current tax system does not follow modern trends in taxation techniques. All the attempts made in the past to improve the tax system have only

seen little change in its system of taxation over the last 2 or 3 years. However, there are positive signs that major reforms will be approved in 1993 and in force by January 1994[107]. Several new tax laws have been drafted, which are intended to modernize the taxation system so that it fits the needs of a market economy. The draft Tax Act on Profits and Income of Bodies Corporate and Non-Corporate Associations significantly changes the way enterprises are taxed in Bulgaria. The main changes in the law include a simplified system with new rates, the abolition of the incentives which are available for foreign investors, the elimination of the current system allowing a deduction for certain capital investments twice, and the introduction of the definition of source of profits. The draft Personal Income Tax Law tackles a number of the problems which are found in the current system and makes significant changes in terms of broadening the tax base and simplifying the tax rates[108].

Incentives are provided for investment in high-tech manufacturing and agriculture, and all joint ventures and foreign companies are eligible for a reduced profits tax rate of 30% (as opposed to 40% for domestic companies). No change in this structure is expected to take place in the near future.

Bulgaria's taxation system is in a state of flux. While some new regulations are now in place, there still remain other parts of the tax system that date back to

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resulted in an extreme burdening of the system, as well as in inconsistencies. The government has now begun to reform the tax system and work out a uniform legal act on taxation in Bulgaria.

[107] The Law on General Income Tax was originally passed in 1950, but has been amended many times, the last being in early 1992.

[108] *See* Bolderson, S., *"Bulgaria: Comprehensive tax reform pending"* (1993) 33 European Taxation 273-276.

pre-communist times[109].

Companies producing and retailing in Bulgaria are subject to the following taxes:

Corporate tax: depending on the amount of profit earned by an individual firm, companies are subject to either a 30% or 40% income tax rate. The 30% rate applies only to firms with at least 50% foreign ownership. Local banks are taxed at a 70% rate and foreign banks and banks with foreign participation over 50% are to be taxed at a rate of 60%.

Value-added tax (VAT): the average VAT rate for goods sold in Bulgaria is 20%.

Social security payments: the employer must pay the equivalent of up to 42% of an employee's gross salary for Bulgarian health, pension and social security coverage. Employers must also cover accident-fund payments equivalent to 7% of gross salaries.

Companies may also be subject to local taxes for services such as water and refuse removal.

A 15% tax on the dividends paid by the companies to their shareholders is

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[109] Here some details of the Bulgarian taxation system with regard to foreign entities follow. The taxation of foreign enterprises is mainly governed by the 1989 Decree on Economic Activity, as last amended in July 1992.

There are two different types of corporate income tax (or Business Profits tax as it is known in Bulgaria) in use in Bulgaria at present. One is applied to *state and cooperative enterprises* and the other is applied to *foreign enterprises with 49% or more foreign participation*. Enterprises with less than 49% foreign participation are taxed in the same way as Bulgarian companies. Branches of and representative offices for foreign companies are also subject to this tax in the same way as Bulgarian enterprises, but only on the Bulgarian sourced profits attributable to the branch or office.

The corporation tax on profits made by foreign companies and their subsidiaries was introduced by Decree 82 of 1982 and is currently regulated by Decree 56 of 1989. The annual corporate tax rate is 40% when the foreign participation is under 49% or the foreign capital contribution is less than US$ 100,000. Companies which have foreign participation exceeding 49% and with foreign capital contribution exceeding US$ 100,000 are taxed at 30%. Taxable profits are determined in the same way as for state and cooperative enterprises. However, a five year loss carry- forward is allowed for losses incurred.

applied as well.

Local physical persons are taxed on both local and foreign sources of income. Foreigners are taxed on income earned in Bulgaria[110]. Bank interest remains tax-exempt. Only income received during the tax year is taxed[111]. Income up to the equivalent of the minimum annual wage is not taxable. Income up to the equivalent of six times the minimum annual wage is taxed at a 15% rate, with higher incomes taxed progressively at 30% and 40%.

The taxation of foreigners in Bulgaria is regulated by special rules. Generally, foreigners may only acquire income in Bulgaria as employees and are subject to tax

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[110] *Decree 535* of March 1980, which allowed foreign investment in Bulgaria, was the first law to regulate taxation of foreign natural and legal persons. It was amended by *Decree 56* in 1989.

Persons liable for personal taxation in Bulgaria are Bulgarian citizens (including persons which hold double nationality) and foreigners who reside in Bulgaria for more than 183 days during any one fiscal year. In the absence of a tax treaty, any income earned from Bulgarian sources may be subject to taxation in Bulgaria.

The following persons *are not liable* for personal taxation in Bulgaria:

- employees of foreign diplomatic missions and consulates;
- representatives of non-economic organisations voluntary organisations, non-governmental organisations etc.);
- students and scholars receiving financial support from abroad;
- scientists and researchers whose stay in Bulgaria does not exceed five years.

Bulgarian citizens and foreign persons who are Bulgarian residents are liable to the following taxes:

- personal income taxes (wages tax and general income tax);
- turnover tax;
- property taxes;
- state and local fees;
- inheritance tax;
- certain other taxes.

[111] Up until 16 August 1993, there was no general appeal procedure for assessed taxes. Each tax law specified the procedure to be followed for that particular tax. In the case of foreign enterprises (enterprises with more than 49% foreign participation), the appeal must had to be lodged within two weeks of the issuing of the tax assessment. Appeal proceedings are usually held in front of the tax administration bodies (usually the head of the district financial department) and the decision taken may then be appealed further to the Ministry of Finance. Concerning payment of taxes pending an appeal, the general rule is that they must be paid regardless and that they will be refunded if the appeal is successful. Tax appeals are now governed by the Tax Procedure Act, published in the *State Gazette* No. 61 of 16 July 1993.

only on their income which is earned in Bulgaria.

The remuneration received by foreign diplomatic and trade representatives who are appointed by and paid by foreign countries are exempt from the payment of any kind of personal taxation as is the income received in Bulgaria by foreign specialists working temporarily in the construction industry and other branches of the national economy.

In general, the income of both resident and non-resident foreigners derived from activity in Bulgaria is subject to taxation at source. The tax rates are the same as those for Bulgarian citizens. Foreign individuals are also subject to the same types of other taxes as Bulgarian citizens. The tax must be paid in the same currency as that in which the taxpayer receives payment for his goods or services. Banks will not execute instructions for cash transfers to the accounts of non-residents unless proof is provided that all taxes due on the amount have been paid.

All foreign persons, including non-resident taxpayers, who are engaged in an economic activity or who receive income from a Bulgarian source, are required to register for tax purposes with the local (municipal) department of the Ministry of Finance. Non- resident taxpayers are obliged to keep accounts in foreign currency indicating the value of the contracts which they have concluded with Bulgarian entities and the amounts of the payments received. The tax rate applied will be 40% of the profits less allowable expenses, etc.[112].

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[112] There are numerous taxes applicable to both local and foreign persons, that by practical reasons cannot be discussed in the present work. Some of them are represented by the *Withholding Taxes.*

Foreign legal and natural persons who earn income in Bulgaria originating from dividends, bank interest, royalties, service fees and rent are taxed on that income at the rate of 15% whether or not they are Bulgarian residents. This tax must be withheld at source.

Joint-stock companies which receive dividends both from stock and share participation

International Tax Treaties are another way of establishing the legal basis for taxation of foreigners. Provided that an agreement has been concluded with another country, corporate tax and income tax paid by local persons abroad is deducted from taxes to be paid under Bulgarian law. Nevertheless such deductions may not be more than the total calculated tax.

If foreign legal or natural persons have paid tax, but, as a result of an international agreement, have the right to full or partial exemption from taxation in Bulgaria, then the tax paid may be returned upon request, as long as the request is presented within one year from the date of payment of the tax[113].

Czechoslovakia

There is a very wide range of measures designed to encourage and support

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are taxed at the rate of 10% of the gross amount of dividends and this amount must also be withheld at source.

The following types of income are exempt from the application of withholding tax:

- dividends which are used for the purchase of shares and bonds in Bulgaria;
- interest on Bulgarian government and National Bank loans from international organisations and foreign banks;
- royalties paid for the transfer of industrial property into sectors under a list set out by the Council of Ministers;
- fees for technical services related to the supply of complete plant, technological, scientific and industrial equipment.

[113] Bulgaria is party to the following international double taxation agreements:

- *income* - Finland, Indonesia, Japan, Malta, France, Sweden;
- *income and property* - Austria, Cyprus, Germany, Denmark, Norway, Belgium, China, Spain, Italy, Luxembourg;
- *income and gains from property transfers* - United Kingdom;
- *agreements prepared for ratification or publication* - Canada, Holland, India, Luxembourg, The Netherlands, North Korea, Sri Lanka, Switzerland, the USA an Zimbabwe.

Treaty negotiations are in progress with Greece, Portugal and Sri Lanka. In September 1992, a double taxation agreement was signed with Austria. In June 1993, the Bulgarian government approved double taxation agreements with Kuwait, Macedonia, Poland and Venezuela.

foreign investment in Czechoslovakia[114]. Some of these are straightforward and legally anchored (e.g. tax holidays), but others are closely tied to the specific features of an individual project. In these cases, success in securing state support depends not only on close and sustained contacts with persons making decisions on the use of state resources, but above all on the ability to argue the merits of the case persuasively, soundly and in terms of practicalities. Moreover, the primary concern of officialdom in many cases is to encourage economic development rather than realize revenue for the state: a persuasive case that a project will in fact be conducive to economic development will therefore carry some weight with the decision-makers.

Currently, the federal Ministry of Finance is empowered to grant: total or partial **tax holidays** of up to two years from the start of operations of newly founded organizations (including newly established companies); a reduction in the rate of income tax and wages tax; and relief from taxes, provided that this is "in accordance with social interests." During such a tax holiday period, however, the company cannot pay dividends and must re-invest all its profits[115].

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[114] Among other incentives, private business and small and medium-sized enterprises are generally given preference in granting of state support. The officially declared criteria for the awarding of state support are as follows: the use of progressive technologies; an increase in export production; a reduction in energy consumption; the protection of the environment; the maintenance of employment; "etc." - which means, in effect, that anything conducive to the improvement of the Czechoslovak economy can be used as an argument.

The following forms of support can be applied for:
- an interest-free loan repayable within three years maximum;
- a nonrepayable financial subsidy to cover up to 20% of costs in selected projects;
- financial allowance to some or all of the interest on loans;
- a one- to three-year postponement in the repayment of loans given by way of financial aid;
- guarantees on up to 70% of the value of loans, in a cases where business entities cannot themselves provide such guarantees;
- tax relief for the initial period of project realization (no details have yet been given).

[115] In applying for a tax holiday, a company should negotiate directly with the Finance Ministry of the republic in which the company is located. Tax holidays are granted to companies in the following circumstances:

According to the law, a tax holiday may be granted for two years, but as a rule it is currently given only for one year, after which the request must be renewed. Under the scheme introduced only in the Czech republic, the state supports selected industrial projects, which are judged from the standpoint of: technological development (meaning the introduction of technically advanced processes or of innovative product lines); or industrial policy (meaning the restructuring of industry in various progressive and strategic directions - the modernization of the automotive sector, the conversion of defense production, the development of special chemicals output, and so forth).'

In Czechoslovakia, since January 1, 1993[116], a completely new tax system has been in place. The *corporate tax* rate for both local and foreign companies is the same at 45%. Turnover tax has been replaced by a *value-added tax (VAT)* system. New health and social insurance funds have been established, and the 50% payroll tax was abolished.

There will be some exceptions to the general 45% corporate tax rate. For example, domestic banks and insurance companies are subject to a flat 55% rate on all profits. New foreign joint ventures will be able to apply for up to a two-year tax

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if the company's production is judged to be very important and necessary for the Czechoslovak economy;

if the company is operating in the service sector;

if the company is using modern technology;

if the company is using or manufacturing environment-friendly technology.

A well-presented and cogently argued application of two or three pages is vital in any attempt to secure a tax holiday. Tho application must include the following:

- information about the budget of the organization;
- a very detailed description of how the funds gained as a result of tax relief will be used for investment purposes and the development of the business;
- a precise rationalization, step by step, of how these funds will be used for business development and how this will contribute to the development of the Czechoslovak economy.

[116] Law on the Tax System (212/1992). In effect from January 1, 1993. Sets the basic features of the new tax system effective from January 1, 1993. Gives a list of the taxes which will be applied.

exemption; eligibility for this concession will be determined on a case-by-case basis. Over the medium term the corporation tax is expected to decline to around 35%[117].

A 25% final tax applies to dividends paid by Czech companies to local or foreign shareholders, unless otherwise specified by an international treaty. Personal income derived from dividends is subject to taxation at the same rate. Corporate interest income is treated as profit and taxed at the same rate. A 25% final withholding tax is levied on interest paid to non-residents.

As of January 1993, a *VAT*[118] system replaced the turnover tax. According to the new law, any companies or individuals carrying out business activities whose turnover during three consecutive years exceeds K1.5m, are liable to register for VAT[119].

The main problem of the new system, is a relatively high corporate tax rate in combination with very limited scope for tax deductions and tax breaks[120]. The tax

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[117] *See "Czech Republic: Companies react to tax changes"* Business Eastern Europe (22 March 1993) 12.

[118] The Law on Value Added Tax was adopted by the Federal Assembly on 16 April 1992, and detailed regulations and directives on the introduction of VAT were issued on 7 January 1993.

[119] For the purposes of the new law, "business activities" include industry, trade and services. The standard VAT rate is 24%, with a reduced 5% rate applicable to foodstuffs. The current regime already corresponds roughly to the West European VAT system. Domestic sales and imports of products and services are subject to VAT tax, while export sales of products and services are exempt.

[120] The main source of discontent for Western companies is the new Income Taxes Law (No. 586/1992), which went into effect on January 1, 1993. The law is divided into four parts and regulates both corporate and personal income taxes. It is one component of a comprehensive overhaul of the Czech Republic's tax code which, along with the introduction of value-added tax (VAT) and new excise taxes, was intended to bring Czech taxation into line with West European norms.

However, the law raises both corporate and personal tax rates and eliminates many deductions and other perks which firms took for granted as compensation for doing business under difficult conditions. The result has been the creation of one of the harshest tax system may especially inhibit the setting up of small and medium-sized companies. The government can be expected to introduce some changes over the next 12-18 months.

The former Czechoslovakia had concluded international tax treaties eliminating or limiting double taxation[121].The Czech and Slovak Republics honour these bilateral treaties and the two republics have concluded a bilateral treaty. The status of the treaties concluded by former Czechoslovakia with other former COMECON (CMEA) countries is unclear, except that the treaty with Russia still applies.

Hungary

Since 1991, Hungary has offered extremely favourable tax treatment to foreign

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environments in Europe. The increase also hits Western firms operating in the country at a time when they are being buffeted by rising local prices, the threat of currency instability, continued high interest rates and diminishing trade with Slovakia as the inter-republic customs union deteriorates.

In the area of corporate income, foreign firms no longer enjoy favourable treatment under the Income Taxes Law and are taxed, along with local firms, at a flat 45% rate. (The previous rate for companies with a foreign stake of 30% or higher was 40%.) The law makes no distinction between representative offices and foreign subsidiaries. The notion of tax holidays, frequently granted in the past for periods of up to two years, has also been dropped in the new legislation.

On the positive side, the new law introduces for the first time the concept of tax loss carry-forward. Losses can now be carried forward for five years. However, firms are prohibited from grouping their business together under a holding company to offset taxable gains and losses. The legislation specifically states that companies are treated as separate entities for tax purposes.

[121] Czechoslovakia has concluded bilateral treaties with the following countries (the provisions of these treaties have been taken over by the two successor republics):

Austria, Belgium, Brazil, Canada, Peoples Republic of China, Cyprus, Denmark (amended in 1992), Finland, France, Greece, India, Italy, Japan, Luxembourg, Morocco, The Netherlands, Nigeria, Norway, Poland, Spain, Sri Lanka, Sweden, Switzerland (under negotiation), The United Kingdom, United States (under negotiation) and ex-Yugoslavia.

Apart from the treaties mentioned above, Slovakia has double tax treaties with Portugal and Tunisia.

investment[122]. Ventures worth at least Ft50 m, with at least a 30% foreign share, and deriving more than 50% of their revenue from manufacturing, have enjoyed a 60% tax allowance (100% in priority industries) in the first five years, and 40% for up to 10 years.

This will no longer be the case in 1994[123], when equal treatment of domestic and foreign investors is due to begin[124].

A foreign company is treated somewhat differently from a Hungarian company[125]. If a foreign company has an official place of business, it is taxed on profits

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[122] For details on the taxation system of Hungary, see Gerendasi, P., *"Hungary Overhauls Tax Regime"* (1992) International Tax Review 20-22; and Rae, M., *"Hungary: The New Business Tax Law"* (1992) East/West Executive Guide 5-8.

[123] *See "Legislation On Joint Ventures"* Doing Business in Eastern Europe (1 September 1993) 4.

Until the end of 1993 the Foreign Investment Act VI of March 8, 1991 governed the establishment and operation of joint ventures in Hungary. Under Act VI, joint ventures founded by the end of December 1993 are entitled to a 60% tax allowance in their first five years of operation and a 40% tax break in the following five years. Additional qualifications include a registered capital of at least Ft50 m, a foreign stake of over 30%, and that more than half of the company's turnover derives from industrial production.

At the end of 1993 these tax incentives ceased to apply. Pressure from domestic industry, hard-hit by the prolonged recession (GDP declined by 12% in 1991 and a further 4-6% in 1992), has resulted in strong opposition to the renewal of tax breaks exclusively for foreign joint ventures. In June 1993 a majority of ministers in the ruling coalition called for equal treatment of foreign and domestic companies. However, the government has said that tax allowances will continue to be granted on a case-by-case basis for priority industrial sectors.

[124] *See "New tax laws for MNCs"* Finance & Treasury (9 August 1993) 6. For the short term the government has agreed that existing incentives will apply to all contracts already agreed, as well as to those in "special activities" if investment has started before the end of 1993. After 1994 concessions on a case-by-case basis in priority sectors are likely. Another possibility is that tax breaks will be granted only to foreign partners in joint ventures on reinvested dividends. The government has been under strong political and fiscal pressure to end the tax relief, since it accounted for Ft13 bn -14 bn of the budget deficit in 1992. Surveys show that tax concessions are not the main consideration for investors, compared with other factors. But they could be decisive at the margin, especially when similar facilities are available in other countries.

[125] *See "Tax incentives"* Financing Foreign Operations (1May 1993) 8. Following the 1991 passage of amendments to the Investment Law of 1988, the automotive sector was added to the list of priority investment sectors (which benefit from five-year tax holidays ranging from 60%

related to that place of business. But the company doesn't have to prepare accounts under the Hungarian accounting regulations; the tax law simply defines what must be included as income and what can be deducted as expense, a process that is not entirely comprehensive. Overall, however, the law says that taxable profit of any foreign company shall not be less than 10% of its gross revenues (unless, of course, something contrary to that is stipulated in tax treaties). If a foreign company does not have a place of business, there is at least a 20% withholding tax on receipts, including royalties and interest. Normally, foreign companies have to be registered in some way, if only to account for payroll withholding. Tax breaks are scarce. If the foreign equity participation in an entity engaged in key activities is at least 30% and at least F50 million, and if the investment is made before the end of 1993, the foreign company can seek reduced tax rates and rebates. The authorities also realized that tax holidays do not necessarily attract business. If taxes were to be reduced in Hungary, then foreign companies would probably pay more taxes at home.

Similarly to the other two countries, Hungary has facilitated the tax treatment of foreigners by concluding bilateral tax treaties with a number of countries[126].

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to 100%), such as biotechnology, food processing and packaging, electronics and telecommunications. Prospective investments in depressed regions may also qualify for tax breaks. A joint venture may be eligible for a 100%, five-year tax holiday if it operates in a "priority field", such as telecommunications, cars or pharmaceuticals. At the end of the five-year period a 60% tax holiday follows for an additional five years if the venture continues to satisfy priority-field conditions. At present random extensions of this tax-holiday period are possible. The government is also considering offering tax holidays for periods of as long as ten years in priority sectors. These *ad hoc* incentives will remain in place at the government's discretion after 1993. Joint ventures in activities deemed to promote cultural development and awareness, health-care improvements, sports or other public services are eligible for a 65% tax deduction over a five-year period.

[126] Countries with which Hungary has concluded Agreements on Avoidance of Double Taxation (as of 1 August 1993):

Australia, Austria, Belgium, Brazil, Canada, Cyprus, Denmark, Finland, France, Germany, Great Britain and Northern Ireland, Greece, India, Israel, Indonesia, Italy, Japan,

C. Accounting system

Bulgaria

Accountancy legislation passed in 1991[127] brought Bulgarian accounting standards to EC levels. The initial law sets out basic accounting procedures, covering assets valuation principles, inventory accounting, certification of company accountants and accountancy firms, and annual financial reporting. The National Chart of Accounts, approved in February 1991, introduced a unified approach to organising accountancy activity in Bulgaria.

Although the legal framework is now approaching Western norms, standards are still low. Programmes are under way to train Bulgarian accountants to understand and use the new system, but progress is slow. Finding good-quality Bulgarian accountants is one of the biggest problems facing Western companies doing business in the country.

Czechoslovakia

The Czechoslovak Federal law on accounting came into effect on January 1, 1992, although previous regulations applied until the end of 1993. The law, similar to the Bulgarian law, is based on regulations in EC Member States, and imposes more detailed reporting requirements upon enterprises. As the accounting system employed is relatively familiar to foreign investors, it will enable them to make more considered investment judgements.

Accounting principles. Act No. 563/1991 provides no exception for legal entities

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Korea, Luxembourg, Malaysia, Malta, Netherlands, Norway, Spain, Sweden, Switzerland, Thailand, Uruguay, USA, Yugoslavia.

[127] Law on Accounting, of January 3, 1991, *see Parker School...*, vol. 1, Release No. 6, (New York: Transnational Juris, September 1991).

with foreign capital participants; thus they are obliged to comply with the same accounting rules as domestic companies without foreign involvement. However, it is possible to apply to the Ministry of Finance (former Federal) for exceptions to the Czechoslovak accounting rules.

Companies are not obliged to have their annual balance sheet and profit and loss account approved by two independent auditors. However, that duty still applies to joint-stock companies, regardless of their size, and to limited liability companies and cooperatives. Furthermore, it applies if net sales are more than K40 million ($1.38 million) or if net assets are more than K20 million ($69,000).

Hungary

Hungary has a new accounting law, which came into force January 1, 1992, that observes both EC directives and international accounting standards[128]. Businesses will have to prepare an annual report - comprised of a balance sheet, a profit and loss statement, a "supplement" (notes to the accounts) and a business report[129].

Consolidation is required where one business has a majority interest in or controls decisions in another enterprise. The law also prescribes a number of

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[128] Previously, companies with Western participation had maintained two different book-keeping systems: the official Hungarian system with a standard chart of accounts for national statistics, and an internal one which enabled the management and the shareholders to control the economic development and financial standing of their company.

The Hungarian Accounting Act incorporates the principles of the Fourth and Seventh European Community Directives in the Hungarian legal system.

[129] The report, which should give a realistic and fair picture of the company's financial position, has a set format which echoes closely that used in Germany. Simplified reports can be filed by small companies, provided that two of the following conditions are met for the year in question:

- total balance sheet assets do not exceed Forints 150m
- net annual sales revenue does not exceed Forints 300m
- the average number of employees is ten or less.

accounting principles to be followed in the preparation of financial statements[130].

A new Financial and Accounting Advisory Committee has been formed in the country by a decree of the Ministry of Finance. The committee is responsible for making recommendations to the ministry concerning the examination and educational requirements needed to receive professional certification as a bookkeeper, accountant or auditor. (The new body is not to be confused with the National Accounting Board, which was established under the terms of the country's Law on Accounting and is responsible for monitoring the implementation of the law.) The activities of the Financial and Accounting Advisory Committee, in addition to those of the National Accounting Board, will probably be coordinated with the chambers of auditors and accountants, which are themselves in the process of being restructured.

Hungary considers itself to be fully European (as evidenced by its intention to apply for EC membership this spring), but its Hungarian accountants are still making the transition from being socialist statisticians to free market decision-makers. The new accounting law is closely aligned with the German accounting model and should be compatible easily fit in with EC practices, but to be effective, the law would have to be implemented.

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[130] These include: clarity, going concern, completeness, consistency, matching, prudence, individual evaluation of assets and liabilities, and not netting off revenue and expenses. Physical stocktakes and checking on fixed assets are required. Assets must not be valued at more than cost (purchase/production), and are to be depreciated over their useful life. Goodwill should be amortised over at least five but not more than fifteen years - introducing into Hungarian law a practice still hotly debated elsewhere.

4. Corporate Forms

Bulgaria

The current business legislation in **Bulgaria** does not differentiate between local and foreign persons. Conversely, the enacted law aims at encouraging larger foreign investment, by providing tax holidays in certain cases and lower taxation for investments over US$100 000.

Art. 3, para. 2 of the FIL expressly states that a company with foreign participation has the same rights as a local company. Accordingly, the Law on Commerce does not contain particular provisions on foreign companies, but legislates on the available forms of business activity in general. The FIL serves as a constitution of foreign investment, while the national law governs other pertinent matters.

The FIL specifies only one form of investment - Trade Agency. This mode of investment, or rather quasi-investment, is not listed in the definition of investments. It envisages the establishment of trade agencies in Bulgaria by foreign natural or juridical persons registered as merchants in their own countries. These agencies are not considered juridical persons under Bulgarian law and are not allowed to conduct any other economic activity. Registration with the Bulgarian Trade and Industry Chamber is required. The applicable law, with regards to transactions made with local persons, is Bulgarian law. The trade agency is a very suitable form for examining the opportunities of the local market and the general business climate in Bulgaria. Recently, many large foreign corporations have made use of this provision and have opened there representative offices for marketing purposes and to investigate opportunities for future investment.

According to the Foreign Investment Law 1992, foreigners can execute business activities in Bulgaria under all forms established by local persons under Bulgarian legislation. Foreign investors are granted national status, provided there are no other regulations in the laws or international agreements. In such cases, the more favourable terms provided by the international treaty shall apply. An additional provision in the Foreign Investment Law stipulates that the Council of Ministers shall be free to rescind the provisions of this law wholly or in part with respect to economic investment activity by foreign persons, domiciled in states that discriminate against Bulgarian companies or citizens.

The 1992 FIL is in fact a company law, whose legal background is the German "Law Merchant". Under the provisions of the Law on Commerce, any business, whether Bulgarian or foreign, may choose one of the available organisational options[131].

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[131] (i) "an individual merchant": any Bulgarian or foreign citizen residing in Bulgaria. This is the simplest form of business, where the owner is the business. The individual merchant's personal estate is liable for her/his business debts. This type of business organization is similar to the US "sole proprietorship".

(ii) unlimited company: an association of two or more persons, whether individuals or companies, which carries on business for profit. Partners incur personal liability for the company's debts when the company's assets are insufficient. No minimum amount of capital is required to set up the company. This type of business organization resembles a partnership but there are several basic differences. Unlike a partnership, an unlimited company is always a legal entity, and because of this, it is subject to double taxation. Furthermore, partners are not co-owners of the business,as in the case of a true general partnership.

(iii) a limited liability company: a company consisting of one or more persons who assume limited liability for the company's debts according to the amount of his or their share(s) in the capital of the company. This type of business organization is most widely used and is similar to the US "closed corporation".

(iv) a limited partnership: a company in which one or more persons, whether individuals or companies, called general partners,manage the company, while one or more persons, called limited partners, only contribute capital and have no right to participate in the management of the business; they do not assume any liability beyond the capital contributed. General partners must participate in at least 10% of the company's capital. There is no minimum amount of capital required to set the company up.

v) a stock company: a company whose capital is divided into shares or stock. Such a company may be founded by two or more persons, either individuals or companies, and simultaneously or successively. If a stock company is to operate in banking and insurance, its capital must be no less than 10,000,000 levs (approx. US$400,000).

(vi) a limited partnership with stocks: a company which consists of one or more general partners and at least three limited partners,whose shares are issued by the company.

Czechoslovakia

Foreign legal persons have the same rights and duties as Czechoslovak legal persons. The new Commercial Code was adopted in 1991. The code replaced all previous regulations on founding and operating a joint venture with foreign capital participation in the CSFR. Within the framework of the code, a joint venture with foreign participation can be established only if the Czechoslovak partner is either a natural person, or a legal person founded by natural persons. In other cases, where a foreign person buys a state-owned enterprise or participates in a state-owned enterprise, it must have this intention incorporated into the privatization project of the enterprise. The project must then be approved by the Ministry of Privatization (see Section 10.1 on privatization and acquisitions). Business in the banking sector still requires a license issued by the State Bank of Czechoslovakia.

Under the Commercial Code, a foreign person may participate in the founding of a Czechoslovak legal entity, or may become a partner (member) in an pre-existing Czechoslovak legal entity, for the purpose of conducting business activities. A foreign person may also establish a Czechoslovak legal entity on its own, or become a sole

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(vii) a holding company: this may be established as a stock company, a limited partnership or as a limited liability company.

(viii) a branch: not a business entity but has a separate balance sheet and a capacity to sue or to be sued.

(ix) a consortium: this is agreement between two or several business organisations to operate a particular enterprise by acting as a partnership or as any of the company types listed above.

partner in a Czechoslovak legal entity. The foreign person is authorized to do business in Czechoslovakia from the day of registration in the Company Register.

The code permits the establishment of a legal entity either under Czechoslovak law, or under the law of another country. However, foreign laws cannot be less rigid than the Czechoslovak laws.

The second part of the **Czechoslovak** Commercial Code recognizes corporate organization[132]. The legal existence of the corporate organization dates only from the registration in the trade register maintained by the regional court. The structures of the organizations are established by a partnership contract, a founder's contract, or, in the case of co-operative associations, by a constituent meeting. The foundation of a partnership limited by shares is no longer permitted under the CSFR law.

The main features of the most salient corporate organizations in Czechoslovakia

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[132] Under the Commercial Code, foreign persons may engage in business activities through any of the following legal forms:

1. Commercial companies, i.e.

a joint-stock company

a limited liability company

a limited partnership

a general commercial partnership (ie an unlimited liability company)

2. Cooperatives

Joint-Stock Companies

The minimum capital requirement for establishment of a joint-stock company is K 1 million, compared with the previous minimum of K 100,000.

The issue of preferential shares up to one half of the stock capital, and issue of employee shares are permitted. On the other hand, the issue of shares bearing an interest regardless of the company's profits or losses is prohibited.

The company may issue bonds up to one half of its capital stock. These bonds may bear the right to be exchanged for shares, or the right of the first option to subscribe for shares.

The minimum capital requirement for establishing a *limited liability company* is K 100,000, while a partner's deposit should be at least K 20,000. At least 30% of each individual monetary deposit must be paid before filling in an application for registration. All of the monetary deposits must total at least K 50,000.

The Partners Meeting is a company's supreme body. The company's statutory body is one or more managers. The initial investment may be cash or kind (licenses, knowhow, training, equipment etc.).

To conduct business activities in the CSFR, a foreign legal person must be entered in the Commercial Register.

are:

(i) Joint Stock Company[133]

The joint stock company is the most visible form of corporate organization in Czechoslovakia[134]. To create a joint stock company, the applicant must complete a founder's contract (or where the company is to be established by only one founder, a founder's deed) together with specific articles of incorporation. A joint stock company must be managed by a Board of Directors, consisting of at least three individuals who may be appointed for a period of up to five years, and a Supervisory Board, consisting of at least three members who may be appointed for a period of up to five years. The Board of Directors represents the company in dealings with third parties, while the Supervisory Board controls the activities of the Board of Directors, but may not directly influence the decisions made by the Board of Directors unless the Articles of Incorporation so provide. Members of the Board of Directors and the Supervisory Board are appointed and discharged through a General Shareholders' meeting.

(ii) Limited Liability Company[135]

The limited liability company is similar to the joint stock company, but is less structured. However, because the maximum number of partners is limited to fifty, it is

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[133] See *supra* note 26, the Czechoslovak law at sects. 154-220.

[134] The minimum capital required to create a joint stock company is one million CSFR crowns (K) - roughly US $33.000 - either in cash or in kind. Upon underwriting the shares, thirty percent of the share capital must be available immediately. The company may issue registered shares, employee shares, bearer shares, and preferred shares.

A joint stock company must establish a reserve fund account, which must initially amount to at least ten percent of the nominal share capital. Five percent of annual profits must be allocated to this reserve fund until its balance totals at least twenty percent of the nominal share capital.

[135] *Id.* at sects. 105-133.

an unattractive option for companies seeking to raise public capital[136].

The key feature of a limited liability company is that the partners' liability for the obligations of the company is limited to the amount of their contribution as initial capital. Partners usually share in the profits and liquidation in proportion to their contributions, but parties may design a more flexible profit sharing arrangement than is possible in a joint stock company.

The management of a limited liability company will be conducted by a Board of Managers. Although a majority decision is required for Board action, each manager, acting alone, has authority to bind the company, unless otherwise stated in the bylaws. A Supervisory Board is optional for this type of company.

Hungary

In **Hungary** the corporate forms are defined in the Hungarian Company Act - the Act on Economic Associations[137]. The Act provides for several alternative forms of business organisations[138].

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[136] A partner must hold an ownership interest of at least 20.000 K (US $660) and the company's minimum capital must be at least 100.000 K (US $3.300). No appraisal is required to value the monetary contributions. Instead it is established by agreement of the parties. Partners in a limited liability company contribute a minimum of five percent of initial capital to a reserve fund, which must be supplemented annually by no less than five percent of the profits until the fund reaches a minimum of ten percent of the initial capital. Prior to the registration of a limited liability company in the trade register, a partner must deposit at least thirty percent of his/her ownership interest and the balance must be paid within five years of the company's establishment.

[137] See *supra* note 26, the Hungarian law, in connection to note 23.

[138] These include the General Partnership, the Limited Partnership, the Limited Liability Company and the Company Limited by Shares. Less significant but available under the Act are two additional forms of limited-purpose business organisations: the Union and the Joint Company. The Union is a business organization comprised of other business organisations for the purpose of promoting their mutual interests. *Id.* at para. 103. A Union is not for the purpose of making a profit for itself but, instead, for purpose of enhancing the economic activities of member organisations. The best western analogy to the Union would ban unincorporated trade association. The Joint Company also is a business organization comprised of other businesses,

(i) the General Partnership: the basic outlines of the provisions of the Act covering General Partnerships are similar to the laws in most Western countries. The partners of a General Partnership remain jointly and severally liable for the liabilities of the partnership, and any contractual provision ostensibly effecting a release of a partner's participation is null and void. Notably, an individual may be a member in only one business organization, such as a General Partnership, in which the individual carries unlimited liability[139].

(ii) the Limited Partnership: Under the Act, the formation of a Limited Partnership requires that the deed of association provide that the liability of at least one of the partners, the "limited partners", be limited to the extent of such partner's investment. The Act obliges a full partner to participate personally in the operation of the Limited Partnership. Interestingly, the Act states, on the one hand, that the deed of association of the partnership may provide for limited partners to also participate in the affairs of the partnership, while specifying, on the other hand, that a limited partner shall not be entitled to "manage" a limited partnership. It is clear, however, that a limited partner may not be empowered to represent the Limited Partnership[140].

(iii) the Limited Liability Company (LLC) is defined as "an association constituted with a primary stock consisting of predetermined primary stakes, in which the member's liability towards the company is limited to providing his primary stake and other

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the best western analogy to which would be an unincorporated joint venture. *Id.* paras. 127-154. These last two forms of business organisations are most closely analogous to western concepts of the corporation.

[139] *Id.* at paras. 6(1), 55, 62 and 75.

[140] *Id.* at paras. 94, 97 and 98.

contributions ...."[141].

(iv) a Company Limited by Shares (Co. Ltd.) is defined as "an economic association formed with a registered capital consisting of shares of predetermined amount and nominal (face) value, in which the shareholder's liability towards the company is limited to supplying the face value or value of the share issue"[142].

There are several distinctions between a LLC and a Co. Ltd. A LLC is an incorporated partnership whose members benefit from limited liability but retain a high level of involvement in the company's business. The shares of a LLC cannot be traded on a stock exchange, and any stock transfer requires the consent of the other partners. The LLC is generally suitable for family or small businesses or for enterprises in which the owners desire a high level of personal control.

The Co. Ltd. is more appropriate for larger enterprises in which capital is raised from a wider circle of investors, and characterized by more formal internal decision-making and management processes. Shares of a Co. Ltd. may be offered in a public subscription. The shares may be offered to the public in Western countries subject to the countries' own securities laws.

Under pre-existing law, joint ventures with Western participation usually took the form of a LLC. This organizational tendency reflected the nature of most joint ventures as essentially private partnerships between existing Hungarian and Western commercial concerns. Most Western investment is likely to follow the same pattern under the new law; therefore, the LLC will probably remain the preferred form of investment. The Co. Ltd. form provides new financing possibilities, however, and

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[141] *Id.* at para. 155(1).

[142] *Id.* at para. 232(1).

should not be ignored. Instead of seeking a partner, a foreign or Hungarian entrepreneur can raise the needed capital to start a business from members of the Hungarian and foreign public. In addition, an enterprise or institution, not prepared to be a full partner, may prefer to take a minority portfolio interest in an enterprise. Finally, the creation of Co. Ltds. is a necessary pre-requisite for establishing a full-fledged Hungarian stock exchange.

IV. International Standards for FDI

The analysis of the pertinent legislation in the three countries has been completed. It is appropriate at this stage to examine the findings of the comparative study in the realm of the international standards for FDI[143], namely, *The Guidelines*. Our goal was to determine how receptive the different countries' legislation is toward foreign investment from an international perspective. Although *The Guidelines* are not binding upon the members of the respective organisations and institutions[144], they draw their authority from the extended international effort and, appear to be the most extensive assessment ever concluded in the field of FDI. For the purpose of the present study, *The Guidelines* are useful with regards to the directions they provide in each of the four main areas of FDI, namely the admission, treatment, expropriation, and settlement of disputes between governments and foreign investors. Furthermore, the results of the conducted surveys are important for determining the place the three countries occupy among other host states, and between themselves[145]. Due supposedly to consideration of earlier laws of foreign investment in the three countries, some of the conclusions on the three countries are incorrect. The following findings require some adjustment vis-à-vis the respective legislation in force:

Bulgaria, for instance, is considered a country with *"special permits*

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[143] See *supra* note 29. *The Guidelines*, along with the reports to the Development Committee and the surveys of existing instruments are published in two volumes by the World Bank Group.

[144] Section 1 of the Guidelines states: "These Guidelines *may* be applied by members of the World Bank Group institutions to private foreign investment...".(*Emphasis added*)

[145] See *supra* note 29.

requirements" for admission of FDI[146]. The legislation presently in force in Bulgaria, as discussed earlier in this study, imposes special requirements only for a limited number of sectors of the economy. These permit requirements, moreover, conform to the Guidelines[147]. The misinterpretation of the working group on the subject is confirmed by another finding: that Hungary does not apply any restrictions on the entry of foreign investment. We have observed that the three countries comprehensively reserve the right to require permits for some sectors of their economy. Imposing some restrictions on FDI conforms fully with the international standards of *the Guidelines*. Therefore, the present regulation of admission requirements in the three countries cannot be considered as an impediment to the flow of FDI, nor can it justify the ranking of the legislation behind others on the international scale.

With regards to the *transfer of earnings or repatriation of profits* by the investor or her/his employees, both Bulgaria and Hungary[148] are in the most populous group of countries[149]. Such transfers, although allowed, are subject to regulations.

An issue closely connected with the acquisition of property is *expropriation*.

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[146] *Id.* Table 1 at 432.

[147] At Section 4 the Guidelines bluntly state the purpose of the permit requirement:

"Without prejudice to the general approach of free admission recommended in Section 3 above, a State may, as an exception, refuse admission to a proposed investment:

a) which is, in the considered opinion of the State, inconsistent with clearly defined requirements of national security; or

b) which belongs to sectors reserved by the law of the State to its nationals on account of the State's economic development objectives or the strict exigencies of its national interest."

Although the main objective of the above article (as many others) is to protect the volatile interests of the developing countries, the universality of the Guidelines is not affected.

[148] Czechoslovakia by no apparent reason is not included in the classifications made by the working groups. Generally, it does not affect our task, because it virtually has the same regulations as the other two countries.

[149] See *supra* note 29, Table 2 at 434.

Companies are often reluctant to invest in a country unless adequate guarantees are given that their investments will not be confiscated and that their property will not be nationalised. With regard to the *expropriation* of foreign investment in host countries, Bulgaria and Hungary are again among the countries sharing the same policy. Expropriation is allowed only in the public interest and in exchange for fair compensation of the property[150]. Another inaccuracy is found in the classification of Bulgaria by the working group, as a country providing a "prior compensation" for the expropriated property[151]. The Bulgarian FIL lends a different meaning to prior compensation[152]. Therefore, the Bulgarian legislation on expropriation does not differ with the Hungarian one, by providing for indemnification based on the market value of the expropriated property.

Bulgaria and Hungary apply *national treatment* to foreign investments[153], as revealed by their respective FILs.

The international standards for FDI, found in *the Guidelines*, have proven that the legislations of the three countries correspond to the recommended limits for the treatment of FDI by host countries. Based on the main factors used to assess FDI

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[150] *Id.* Table 4 at 437 .

[151] *Id.* Table 5 at 438 .

[152] The Bulgarian FIL at art. 10 states:
(3) The confiscated property and the compensation shall be valued at market prices for the time of expropriation.
(4) The property given in compensation shall be of equal worth to the expropriated one and in its vicinity, or at a different location with the approval of the owner.
(5) Expropriation shall be effected only after the owner has been duly compensated.
(6) The difference in value, when compensation is effected in the form of property, shall be covered by the owner or the state.
See Appendix "A".

[153] See *supra* note 29, Table 1 at 432.

legislation, it is evident that each of the countries studied does not raise barriers before a foreign investor bigger than the typical for the developed countries. It is certainly a credit for the economies in transition, which have drafted legislation in conformity with international requirements, over a short period of time.

V. Conclusions

The present work has demonstrated that the time of differential treatment of fundamental foreign investment issues by the surveyed legislation of Bulgaria, Czechoslovakia and Hungary, is gone. The basic FILs in the three countries are predominantly analogous. At the same time, the complexity of all related to the FDI matters in both present and future is deepening. The new reality stresses the subtleties of the investment regime. That is, the international business community regards not solely the core of the FDI regime, but extends its attention to the periphery of that regime too.

The main purpose of the present study was to provide an overview of various facets of the legal framework for private sector activity in a market economy. It covered areas of a prime importance for potential investors, such as expropriation of foreign investment, real property, company law, etc. It further considered not only how the three East European countries are tackling these areas in general, but provided a more detailed analysis of these areas on a comparative basis.

It is obvious that the three countries have made extensive progress in passing the legislation which forms the legal framework of a market economy. This progress, however, is not the only variable to shape the interest of foreign investors. Some of the other aspects which hamper or influence foreign participation are forthcoming in the discussion.

Despite the obvious advantages of investing in CEE[154], it is often and correctly

[154] In the past three years, the world economy has undergone a major structural change. Suddenly markets have become accessible that had been centrally planned and quasi-isolated from trade with the Western world for decades. In the long term, they offer interesting

emphasized that before investing in Central and Eastern Europe, companies must come to terms with another critical factor: **the political uncertainty** in the region[155].

Indisputably, Hungary and Czechoslovakia offer less **risky** environments compared to Bulgaria[156]. They are, therefore, becoming more and more popular with foreign investors as they offer skilled, relatively low-paid labour and opportunities to capture large shares of their markets. Bulgaria (still in the same basket with Romania and Albania) is not as advanced in its reforms as Hungary and Czechoslovakia. Foreign investment opportunities there are still perceived as too risky.

Another variable that shapes the inclination of foreign companies to invest in CEE is the ambiguous and unmanageable realm of one **nation's culture**. All three countries, from 1989 until the present, have experienced an ongoing cultural transformation, which has promoted private initiative, independence in action, personal responsibility, integrity, and free and open communication. This change is the most difficult aspect of the transformation. Some parts of that culture are rooted in the stage

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opportunities to Western investors; however, in the short term, their political and social instability are very risky. Nevertheless, it is worthwhile to observe the progress and take part in infrastructural, education, telecommunications, energy, environmental projects supported by international organizations in these countries. Involvement of Western companies is likely to give them a competitive advantage in Eastern European markets in the long run. From a perspective of Southeast Asian or North American investors, they have the advantage of proximity to the European economic area. In the long term, they promise accessibility to the whole European market.

[155] With the initial political skirmishes fading away (they, though, have not entirely lost the clout), the question of how to transform one country's Soviet-style economy has been the major domestic issue throughout CEE. Although both the majority of politicians and the population want some form of reform, views concerning the degree and the pace of restructuring differ widely. As large numbers of people are worried about the social effects of the recession and the reform programme, progress has been slow and controversial. However, the economic policies of respective governments have been overall reform-oriented and have successfully tackled a number of key issues.

[156] With the current government in its fourth year, Hungary is more stable than some other countries. Labour and other costs, however, are relatively high.

of industrial development in the wake of World War II. Other parts of that culture were subsequently imposed on the respective economies in the region by communism and the Soviet model.

The objective study of the three countries also requires to view them in a **historical context**: Bulgaria, for example, had one of the most centrally controlled economies in the socialist period, while in Hungary, private ownership of land remained comparatively less constrained. If one can rightfully claim that Czechoslovakia was one of the leading industrial states in Europe with an adequate legislation in its previous capitalist life, the same would be exaggerated in respect to Hungary. As for Bulgaria, it is fair to admit that its true industrial development began in the years after WW II. This demonstrates that each country has a very particular legal environment inherited from the socialist era. Nevertheless, all the countries in CEE previously had equal entrepreneurial ambitions fuelled by the natural drive of capitalism. Different stages in the **industrial development** were the result of the worldwide economic competition with its underlying components.

Forty-five years later, the result of the equalization among the members of the Eastern block was the dreadful mix of underdevelopment and overemphasis on heavy industry. These erroneous strategic economic decisions, coupled with the reckless indebtedness, crippled the economy of CEE and brought it to its demise.

The ancillary goal of the study was to determine what makes Bulgaria a different bird in the CEE flock. As it is apparent from the statistics provided in Chapter I, the Bulgarian transition is proving to be an uneasy one[157]. Rather, the

[157] The changes in industry that must take place are bound to create a great deal of unemployment. Terminations are common at all levels. With the curtailment of purchases from the USSR, there is no reason for many of the production facilities to exist.

change will most likely take at least a generation and involve all sectors of the society[158]. The major difficulties arise from the fact that the four elements of the system - the individual, society, commerce and industry, and the political arena - must be treated as a system[159].

The reason for the slow pace of the Bulgarian transition is not to be found in the enacted legislation. With the current Bulgarian government placing a top priority on trade reform and privatization, the country offers significant trade and investment opportunities[160]. The gap between the legislative progress and the real economic change is still present. Although the government has passed privatisation legislation and the number of small, private businesses is growing, industrial restructuring has been very limited to date. Most industry is still in state hands. Fear of mass unemployment, which has already reached 30% in some regions, has prevented the government from taking the necessary measures, such as adequate bankruptcy legislation, for restructuring heavy industry. The national unemployment rate was more than 14% in June of 1993[161].

Furthermore, a major problem facing legislators in Bulgaria is the lack of cash

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[158] *See "Learning To Manage In a Free Economy"* (1992) 35 Research - Technology Management 5-7. The author, who spent five months teaching at Sofia University, held: *"From an educational point of view, Bulgaria seems to be three to five years behind the West. From an implementation point of view, they are probably at least seven to ten years behind."* What has to be added is that without the timely and fair help in terms of business investments and transfer of western methods of education and application, Bulgaria may continue to lag not only behind the West, which is more or less justified, but behind its recent peers as well.

[159] *Id.*

[160] *See* Fabrizio, L., *"Bulgaria: Government sets sights on economic change"* 114 Business America (19 April 1993) 30.

[161] *See "Domestic and Foreign Policies: Bulgaria"* Doing Business in Eastern Europe (1 October 1993) 7.

within the economy. To get the economy functioning, the government must find new sources of capital to finance local investment[162].

Returning to the motto cited in the introduction of the present work, the alleged enigmatic image of Bulgaria is what is most striking[163]. What for years has been considered enigmatic about Bulgaria is nothing more than the lack of information on Bulgaria in the West and specifically in North America. Hopefully, the present work will shed some light on the business legislation of Bulgaria and all related matters.

In this vein, recent developments in Bulgaria seem to support a different, positive trend in the area of foreign investment. The situation has become promising lately with the signs of increased interest from American prospective investors[164]. That could change the western attitude toward the market in Bulgaria, which has generally been overlooked.

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[162] The country's crippling international debts have deterred financing from most external sources and the amount of capital generated by the domestic banking system is inadequate - the banks are simply too illiquid to lend effectively. The following example illustrates the gloomy reality there: In early 1993 Bulgarian citizens were invited to take part in privatisation through the purchase of discounted shares, a system similar to the Hungarian Small investor scheme. Results were dismal. Of the few citizens who had the money to buy shares, most preferred to open up their own businesses or bank the money and earn interest rather than risk buying into existing state-owned firms with uncertain futures.

[163] The popular image of Bulgaria in the West is captured in the words of an ordinary american, Mike Levinson, assistant city manager in charge of finance and economic development in Coral Springs, Fla: *"Bulgaria was considered to be the most slavishly loyal country to Moscow of all the Eastern European countries"* . See *"Capitalism on the March"* Plants Sites & Parks (September 1993) 26.

[164] Christopher Finn, Vice-President of the Overseas Private Investment Corporation, has recently led a high profile business delegation of 20 American CEOs to Bulgaria. The delegation has brought a letter from President Clinton to the Bulgarian President Zhelyo Zhelev stating the good intentions of the American administration. See Federal Broadcasting and Informational Service -EEU-93-200 (19 October 1993) 1.

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Appendix "A"

Law on the Business Activity by Foreign Nationals and Protection of Foreign Investment

SUBJECT

Art. 1. (1) This law shall settle the conditions and procedures for economic activity of foreign nationals and the protection of foreign investments in the country.
(2) The Council of Ministers shall provision that the regulations of the Law shall not be fully or partially applicable to the economic activity and investments of foreign nationals from countries which apply discriminatory measures to Bulgarian companies or nationals.

FOREIGN NATIONALS

Art. 2. (1) For the purposes of this law a foreign national shall denote: 1. juridical person registered abroad; 2. association which is not a juridical person and is registered abroad; 3. physical person: a foreign citizen permanently residing abroad.
(2) Bulgarian citizens permanently residing abroad shall be considered foreign nationals only in cases specifically provisioned by the law.

RIGHT TO BUSINESS ACTIVITY

Art. 3. (1) Foreign nationals shall have the right to carry out business activity in the country and to have stocks and share participation in trade associations under conditions provisioned for Bulgarian citizens and juridical persons if the law does not provide otherwise.
(2) associations with foreign participation shall enjoy the same rights as those without foreign participation, except in cases stipulated by law.
(3) The extent of foreign participation in newly-established or existing associations is unlimited.
(4) The foreign physical person must obtain a permit for permanent residence in the country in the following cases:
1. To be registered as a private businessman; 2. to become part of a cooperative; 3. to become part of unlimited partnership company; 4. to participate as an unlimited liability partner in a limited partnership/joint-stock company and public limited partnership
(5) A foreign national shall be deprived of the right to permanent residence under the above paragraph in the case of committing crime. He can appeal to the court under the Law for administrative proceedings.
(6) The foreign physical person or company which is not a juridical person under its

national law may register a branch if it has been registered with the right to perform business activity (trade) under the law of the respective country.

TRADE REPRESENTATIONS

Art. 4. (1) Foreign nationals who have the right to carry out business activity under their national legislation shall be able to open trade representations which shall be registered by the Bulgarian Chamber of Commerce and Industry.
(2) Representations under the above paragraph shall not be considered juridical persons and shall not perform business activity.
(3) Business transactions carried out by a foreign national with local persons for the needs of the representation registered by him under para. 1, shall abide by the regulations for business transactions between local persons.

RESTRICTIONS

Art. 5. (1) A foreign national shall obtain title of ownership on buildings and restricted ownership rights on real estate. The foreign national shall acquire a home only through exercising the right to build or under regulations determined by law.
(2) The foreign national, be it as a private businessman or through a branch, shall not have the right to ownership of land. A company with more than 50% foreign participation shall not have the right to ownership of agricultural land.
(3) Foreign nationals or companies with foreign participation, directly or through other companies with foreign participation, which provides majority in taking decisions or obstructing such must request permission under the following circumstances:
1. production and trade with arms, munitions and military equipment; 2. performing banking and insurance activities; 3. acquiring real estate in certain geographical regions specified by the Council of Ministers; 4. drilling, exploitation or extracting natural resources from the territorial waters, the continental shelf or the exclusive economic zone; 5. acquiring participation, which grants majority in taking decisions or obstructs the taking of such, in a company which carries out activities or has property under the above paragraphs.
(4) Transactions concluded in violation of this article or through a dummy shall be declared void by decision of the court on request of the prosecutor or the interested parties. In this case the contribution of the violating party is confiscated by the state.

GRANTING LICENSES

Art. 6. (1) Licenses pursuant to para. 3 of the above article shall be issued by the Council of Ministers or by the respective authorized body. Permits for banking and participation in bank associations shall be granted by the Board of Directors of the Bulgarian National Bank.
(2) The Council of Ministers, respectively the Bulgarian National Bank, publishes in the State Gazette the conditions which are to be observed for granting permit under para. 3 of the preceding article.
(3) The Council of Ministers shall review the application in 45 days. The Bulgarian National Bank shall review the application for banking activity within a period of 6 months, for participation in a bank association - within a period of 3 months. The

rejection shall be grounded.

INTERNATIONAL TREATY PRIORITY

Art. 7. In the case when an international treaty to which Bulgaria is a party provides more favourable business conditions to foreign nationals, these conditions shall be applied.

FUTURE AMENDMENTS OF THE LAW

Art. 8. Legally performed business activities and investing shall not be affected by any future legal restrictions. These regulations shall be applied to activities underway and rights acquired in conformity with legal documents preceding this law.

FOREIGN INVESTMENTS

Art. 9. (1) For the purposes of this law a foreign investment~ shall be every investment by a foreign national, including a private businessman or a branch, or a company with foreign participation more than 50% in the following:
1. stocks and shares in business companies; 2. right to ownership and restricted ownership rights over real estate; 3. enterprise ownership; 4. bank accounts; 5. debentures, treasury bonds and other securities issue by the state or Bulgarian juridical persons; 6. credit for more than 5 years.
(2) A foreign investment shall also be the real estate ownership of companies with more than 50% foreign participation.
(3) Foreign investment includes the value increase of the investment under the above paragraphs.

PROTECTION OF FOREIGN INVESTMENTS

Art. 10. (1) Property owned by a foreign national for the purposes of this law shall be expropriated in cases of extremely important state purposes which cannot otherwise be met. Expropriation shall not be effected based on regulations but on a statute.
(2) Expropriation of property and compensation of the foreign national shall be ordained by the Minister of Finance.
(3) The confiscated property and the compensation shall be valued at market prices for the time of expropriation.
(4) The property given in compensation shall be of equal worth to the expropriated one and in its vicinity, or at a different location with the approval of the owner.
(5) Expropriation shall be effected only after the owner has been duly compensated.
(6) The difference in value, when compensation is effected in the form of property, shall be covered by the owner or the state.
(7) Compensation shall be effected in money value if the owner has agreed to such a settlement.
(8) The order for expropriation is subject to appeal before the Supreme Court in accordance with the Law on Administrative Proceedings, in respect to reasons for expropriation, evaluation, means of compensation and other matters in the order.

REGISTRATION OF FOREIGN INVESTMENT

Art. 11. (1) Foreign nationals shall register their investments in the country and any changes not later than 30 days after the investing or the changes have taken place. Bank accounts shall not be subject to registration.
(2) Foreign investments shall be registered by filing a declaration to the Ministry of Finance approved and published by same ministry.

SECURING FOREIGN CLAIMS

Art. 12. Claims of foreign nationals, including such in foreign currency, shall be secured by mortgage. The mortgage shall be considered real also in the case where the object has been left with the debtor and is used by him, on condition that a written up-to-date agreement exists to that effect. Registration of mortgage shall not require the permit of a state body.
Art. 13. (1) A foreign national shall have the right to buy foreign currency from the Bulgarian banks in the cases when this is permitted for local persons, and in the following cases:
1. the investment profit in the lev equivalent;
2. compensation on expropriation of the subject of investment for state purposes; 3. liquidation quota on termination of investment; 4. the sale price of the object of investment; 5. the sum in lev obtained by virtue of the compulsory execution for claims in currency under Art. 12.
(2) A foreign national shall have the right to transfer abroad the currency obtained on verifying that the respective taxes have been paid.

LABOUR AND INSURANCE AGREEMENT

Art. 14. (1) Labour relations between foreign nationals, private businessmen, companies with more than 50% foreign participation, as well as branches of foreign businessmen and workers, Bulgarian and/or foreign nationals shall be settled in conformity with the regulations in this article.
(2) The labour relations under para.l shall be settled by the labour contract. The contract shall not deviate from the regulations of the Bulgarian labour code in relation to the following:
1. written contract;
2. maximum duration of working hours, respectively: minimum duration of daily and weekly breaks and the annual leave; 3. minimal salary for the country; 4. minimal period for announcing the termination of a contract when such has been set or is required by the law, as well as the minimum insurance on termination of the labour contract with or without forewarning 5. the responsibility of the employer for damages caused by occupational accident or disease; 6. regulations for hygiene and labour safety.
(3) Bulgarian nationals employed by employers under para 2. shall be obligatorily insured at the expense of the employer for all insurance cases according to the Bulgarian insurance law. (4) Foreign workers and employees, shall be obligatorily insured against temporary or long-lasting disability at the expense of the employer. The amount of the insurance is 20% of the total monthly remuneration. For the remaining

cases insurance shall be settled by the labour contract.
(5) Foreign nationals working under labour contract with trade associations with more than 50% foreign participation, foreign national registered as a private businessman or with a branch or representation of a foreign national, shall have the right to buy foreign currency of up to 70% of the remuneration, as well as the compensations under the labour contract and personal insurance.
(6) Labour disputes between employers and Bulgarian nationals, under para. 1 shall be settled by a Bulgarian court of law, and disputes with foreign nationals shall be settled as provided by the labour contract.
(7) All issues of labour and insurance relations with the employer under para. 1 which are not set forth by the labour contract shall be settled in accordance with the Bulgarian labour and insurance legislation.

OPERATIONS WITH FOREIGN CURRENCY

Art. 15. (1) Foreign nationals shall have the right to open accounts and make deposits in foreign currency in Bulgarian banks and operate with stocks, debentures and other treasury bonds.
(2) Transactions by foreign nationals performed by a branch or as a private businessman shall conform with the order envisaged for local persons.
(3) In the cases of local persons having the right to make payments in foreign currency on behalf of foreign nationals, these payments can be made in the country, including by checks, orders of order and bills of exchange.

ADMINISTRATIVE PENAL REGULATIONS

Art. 16. (1) Foreign national carrying out business activity in without a permission if such is requested shall be fined to the double amount of the profit made in the country established by the tax authorities, but not less than 50,000 lev.
(2) A foreign national who fails to register his investments in accordance with Art. 11 or provides false information on registration shall be fined to the amount of one tenth of the unregistered investment.
(3) Violations shall be established by the Ministry of Finance and the fines shall be ordained by the minister of finance and appealed in accordance with the Law for Administrative Violations and Penalties.

FINAL PROVISIONS

1. This law abrogates the Law on Foreign Investment (State Gazette No 47 of June 14, 1991; corr. No. 48 of 1991).

2. The implementation of this law is assigned to the Council of Ministers.

THE LAW WAS ADOPTED BY THE 36TH NATIONAL ASSEMBLY ON JANUARY 16, 1992 AND IS STAMPED BY THE STATE SEAL.

Appendix "B"

CHAPTER TWO

BUSINESS ACTIVITIES OF FOREIGN PERSONS

SECTION I

Basic Provisions

A 21

(1) Foreign persons may conduct their business activities on the Czech and Slovak Federal Republic's territory under the same conditions and to the same extent as the Czechoslovak persons, unless the law stipulates otherwise.

(2) For the purposes of this Code, a foreign person shall be deemed to be a physical person with domicile, and a juristic person with its registered office, outside the territory of the Czech and Slovak Federal Republic. For the purposes of this Code, a juristic person with a registered office in the Czech and Slovak Federal Republic shall be considered to be a Czechoslovak juristic person.

(3) For the purposes of this Code, the business activities of a foreign person on the territory of the Czech and Slovak Federal Republic shall be understood to mean business activities of a foreign enterprise, or its organisational part, located in the Czech and Slovak Federal Republic.

(4) A foreign person's authorization to conduct business activities on the territory of the Czech and Slovak Federal Republic shall be established on the day on which that person, or the person's organisational part, is recorded in the Corporate Register. The foreign person shall be authorized to conduct the scope of business activities as specified in the Corporate Register. A petition requesting registration in the Corporate Register shall be filed by the foreign person.

A 22

The legal capacity of a foreign person, other than a foreign physical person, under Czechoslovak law shall correspond to the law under which such a juristic person was established. The law, under which the foreign entity was founded, shall also govern its internal relations and its members' or partners' liability for its obligations.

A 23

Foreign persons authorized to conduct business activities abroad shall be considered to be businessmen under this Code.

SECTION II

Foreign Persons' Capital Participation
in Czechoslovak Juristic persons

A 24

(1) According to the provisions of this Code, a foreign person may participate in the founding of a Czechoslovak juristic person, or may become a partner or a member in an already existing Czechoslovak juristic persons, for the purpose of conducting business activities. A foreign person may also found a Czechoslovak juristic person solely, or become a sole partner of a Czechoslovak juristic person, provided that this Code permits the founding of such an entity by one person.

(2) Juristic person may either be founded under Czechoslovak law, or under the law of another country; .26, paragraph 3, sentence two shall similarly apply.

(3) As regards matters stipulated in paragraph 1, foreign persons shall have the same rights and obligations as Czechoslovak persons.

SECTION III

The Protection of Property of Foreign Persons
Conducting Business Activities in the Czech
and Slovak Federal Republic

A 25

(1) A foreign person's property connected with business activities in the Czech and Slovak Federal Republic, and the property of a joint venture with foreign capital participation under A 24, paragraph 1, may be expropriated in the Czech and Slovak Federal Republic, or its ownership rights may be restricted, only on the basis of the law, or in the public interest, if there is no other alternative. It shall be possible to lodge an appeal with the court against such a decision.

(2) In the event that the measures stipulated in paragraph 1 are applied, the foreigner concerned shall without delay receive compensation reflecting the full value of the property affected by any such measure at the time of its enforcement and this compensation shall be freely transferable abroad in a foreign currency.

(3) International agreements binding on the Czech and Slovak Federal Republic and published in the Collection of Laws shall not be affected.

SECTION IV

The Relocation of a Foreign Juristic Person Registered

Office to the Czech and Slovak Federal Republic

A 26

(1) A juristic person, founded under the law of a foreign country for the purpose of conducting business activities, with its registered office abroad, may relocate its registered office to the Czech and Slovak Federal Republic. The transfer of the entity's registered office to the Czech and Slovak Federal Republic shall be possible, provided that the law of the country in which the registered office is now located, permits such relocation. Should the juristic person in question have been founded under the law of a country, other than that in which it is now located, then the transfer shall be possible, provided that the relocation is permissible under that country's law.

(2) The relocation of the registered office under paragraph 1 shall be effective from the day on which it is recorded in the Corporate Register.

(3) The internal legal relations of a juristic person, referred to in paragraph 1, shall be governed by the law of the country under which it was originally founded, even after its relocation to the Czech and Slovak Federal Republic. The same law shall regulate the liability of the juristic person's partners or members towards third parties; the liability may, however, not be less than that stipulated for the same, or for a similar form of a juristic person under the Czechoslovak law.

Appendix "C"

Act XXIV of 1988 on the Investments of Foreigners in Hungary

Having in mind the development of international economic cooperation and in particular the promotion of the direct presence of foreign capital in our economy, further
With regard to assisting the technological progress of the Hungarian economy also in this way, and
Moved by the wish to ensure foreign investors the national treatment free from any adverse discrimination,
The National Assembly has enacted the following Act:

CHAPTER I GENERAL PROVISIONS

Section 1

(1) The investments of foreigners in Hungary shall enjoy full protection and safety.

(2) The foreign investor shall be promptly indemnified for any damage arising from any possible measure affecting his property, such as nationalization, expropriation or any measure involving a similar legal effect. Compensation shall be paid at actual value.

(3) The State shall see to it that indemnification be effected by that state-administrative body which has issued the given measure. In case of infringement of law revision of the decision of the state-administrative body may be requested from the Court.

(4) The amount of compensation shall be paid to the person entitled to it in the currency of the investment.

Section 2

For the purposes of the present Act:

(a) the term "foreigner" denotes a legal entity or a natural person who (which) qualifies as foreigner under the statutory rules relating to foreign exchange control;

(b) the term *"investments of foreigners in Hungary"* covers: an economic association with foreign participation (i.e. "joint venture"), a company founded by a foreigner (foreigners) as well as acquisition of an interest (share) by foreigners in a company (hereinafter, collectively: "company with foreign participation").

Section 3

A company with foreign participation may be founded in the manner and in the forms defined in Act VI of 1988 (Act on Economic Associations, briefly: The Company Act - hereinafter: CA).

Such companies shall be governed by the provisions of the CA - with the exceptions listed in the present Act.

Section 4

(1) A company with foreign participation may participate in the foundation of another company, or found such a company on its own and acquire an interest (share) in an existing company - subject to the limitation of para. (2) herebelow. The provisions of the present Act shall not apply to such companies; with the exception of the provisions of Chapter IV which shall still apply.

(2) A company limited by shares whose majority is in foreign ownership, or is fully foreign-owned, may not acquire a majority (controlling) interest in another company limited by shares.

Section 5

The supervision of legality over a company with foreign participation is exercised by the competent Court of Registration.

Section 6

Whenever an international agreement (contract) contains provisions different from the present Act, the former shall be applicable.

CHAPTER II
FOUNDATION OF A COMPANY WITH FOREIGN PARTICIPATION ACQUISITION OF INTEREST IN AN EXISTING COMPANY

Section 7

Foreigners may participate in the foundation of a company, or else become members in a company, only if they have a firm according to their national laws, or have been entered (incorporated) in a trade (or other economic) register according to their national laws. Any foreign natural person or legal entity may be shareholder.

Section 8

In a company with foreign participation the following (Hungarian) persons, respectively, entities may become inland founders or members: the state, any legal entity, economic associations which arc not legal entities, as well as natural persons, in accordance with the provisions of the C.A.

Section 9

(1) A company with foreign participation may be founded for the purpose of any economic activity, except those excluded or limited by law.

(2) The joint permit of the Ministers of Finance and of Trade is required to the foundation of a company fully owned or majority-controlled by foreigners, to the transformation into such a company, further to the acquisition of a controlling interest in a company. The said permit includes the permission of the foreign exchange authority. If the relating application is not rejected within ninety days, the said permit shall be deemed to have been granted.

(3) Neither the permit of the foreign exchange authority, nor any other permit is required when the foreign interest does not amount to that defined in para. (2) above.

Section 1O

(1) Application for a permit (section 9, para. (2)) shall be filed with the Minister of Finance.

(2) The application shall be filed by

(a) the Hungarian founder in the case of the foundation of a new company,
(b) the foreign party, in the case of a full foreign ownership, (c) the company, in the case of acquiring a foreign interest in an existing company.

The application must be filed in five copies, in Hungarian. It may be filed by another person entrusted therewith; in the case of clause b) an inland person must be designated to receive documents.

(3) The application shall contain the following:

(a) the names (firm's names) of the Hungarian and the foreign members (founders), the form and seat (domicile) of their firms;

(b) the form of the (intended) company, the place of its registration and of its seat; further the description of its range of activities;

(c) in the case of an existing company: the size of the existing property (primary stock, registered capital) at the date of the filing of the application; in the case of the foundation of a new company; the corresponding planned data;

(d) the manner of distribution of the net after-tax profit; (e) the description of the company's intended business strategy accompanied with assessable data.

(4) To be attached to the application: the deed of association (memorandum, statutes, draft deed of foundation) in Hungarian; for an existing company the possibly necessary amendment of the said documents.

Section 11

(1) The joint decision on the application shall be issued by the Minister of Finance. A dismissing decision shall be accompanied by the reasons therefore.

(2) If the application has not been submitted in the prescribed form or with the prescribed contents, the remedying of the deficiencies may be decreed - once - within 30 days from filing. The application must be adjudged on its merits within 60 days from the date when the deficiency has been remedied.

(3) A copy of the decisions mentioned in paras. (1) and (2) above shall be sent to the Court of Registration.

Section 12

(1) The foreigner is obliged to pay in his pecuniary contribution in a freely

convertible currency - unless an international agreement provides otherwise.

(2) A non-pecuniary contribution may consist of any kind of negotiable assets having an assessable value, of an intellectual creation and valuable title (right).

Section 13

(1) If more shares have been subscribed to than the amount the company limited by shares intends to issue and, for that reason, some subscribers are refused (cf. CA section 255), even the subscription by a State-budget organization or a financial institution may be refused, provided the company is one with foreign participation.

(2) A foreigner may only acquire registered shares. Whenever a bearer's share is assigned to a foreigner, such share shall be transformed into a registered one. In the case of succession (upon death) the bearer's share of a foreign heir shall be transformed into a registered share within a year from the distribution of the legacy.

CHAPTER III
THE TERMS OF OPERATION OF COMPANIES

Section 14

(1) The company with foreign participation (hereinafter: the Company) liable to pay entrepreneur's profit tax (EPT) . The basis of assessment (tax base) is the company's profit earned in the respective calendar year. The company shall have no other payment obligation on the basis of its profit, toward the State-budget.

(2) The rate of the EPT amount to forty percent on the part of the tax base not exceeding three million forints and fifty percent on the part exceeding that amount (calculated tax).

Section 15

(1) The Company is entitled to every tax allowance granted to other inland business organisations.

(2) Further tax allowances in the range of the EPT:

(a) if the foreign stake in the company's property at foundation reaches twenty percent or five million forints, the Company shall be entitled to a tax allowance of twenty percent of the calculated tax;

(b) if more than half of the Company's sales receipts derive from the production of commodities or from the operation of a hotel constructed by it, further if the company's property at foundation exceeds twenty-five million forints out of which at least thirty percent derive from foreign participation the Company shall be entitled to a tax allowance of: sixty percent in the first five years and forty percent from the sixth year onwards, the said dates being counted from the commencement of the sales of the said commodities, or of the rendering of the said services, respectively;

(c) provided the conditions specified in clause (b) hereabove have been fulfilled and further provided that the Company cames on an activity of special importance for the Hungarian economy - as defined in the Annex to the present Act - the Company shall be entitled to a tax allowance of a hundred percent from the calculated tax in the first five years and sixty percent from the sixth year onwards, the said dates being counted from the commencement of the sales of the said commodities, or from the rendering of the said services, respectively.

(3) The tax allowances may be availed in the form of tax-reduction.

(4) Provided the conditions specified in para. (2), clause (a) have been fulfilled, the Council of Ministers may - by Decree - grant a longer-term or more favourable tax allowance than those provided for in para. (2) to Companies carrying on financial institution activities or activities of special importance - as defined in the Annex to the present Act.

Section 16

(1) If the foreign member (share-holder) invests - partly or entirely - the dividend due to him, - to increase the property at foundation - provided the conditions specified in clauses (b) and (c) of para. (2), section 15, have been fulfilled, the Company shall be entitled to a tax allowance equalling the sum of the tax due on the said sum, such tax allowance being available in the form of tax-reduction.

(2) A further condition of the tax allowance according to para. (1) above is that the net profit should be at least equal to the aggregate sum of the increment of the property at foundation and the tax allowance attached to it.

Section 17

In the case of an investment made by the Company, a hundred percent of the general turnover tax previously charged having accrued in the year under review shall be retainable.

Section 18

Means of production made available by the foreign member of the Company to the Company as a non-pecuniary contribution, may be imported to the country free of customs duty.

Section 19

The Company shall be entitled

(a) to acquire property rights (ownership) and other rights on the real estate required for its economic activities defined in the deed of association (company statutes);

(b) to freely dispose of its assets within the limits of the Hungarian legal rules and the deed of association (company statutes).

Section 20

(1) In the course of the purchase and sale of goods, the Company shall act according to the statutory rules relating to the turnover of commodities and the market surveillance.

(2) The terms of the market shall govern the formation of prices, nevertheless within the limits of the legal regulations prohibiting unfair economic activity and the formation of unfair prices. Whenever an official price is set by legal rules, that price

shall be applied.

Section 21

The Company may display foreign-trading, wholesale and retail trade activities according to the rules governing the domestic economic organizations.

Section 22

The statutory rules relating to the protection of the quality of products and services shall also be applied to the Company.

Section 23

The Company may contract loans and transact its money turnover according to the rules applicable to other domestic economic organizations.

Section 24

The Company's accountancy, the drawing up of its balance-sheet and submission of statistical data as well as state auditing shall be governed by the statutory rules relating to other domestic economic organizations.

Section 25

In the case of a lasting insolvency, the rules relating to winding-up proceedings shall apply.

Section 26

(1) On the wages and salaries paid to employees, the Company shall pay a social security contribution equal to that paid by other domestic economic organizations.

(2) The Company shall be liable to pay social security contribution only after such foreign employees who wish to avail themselves of the free health-care and the services of the Hungarian social insurance system. This provision shall be applied - correspondingly - to the old-age pension contributions (paid by the employees) as well.

Section 27

Foreign persons may be executive officers, managing directors, members of the supervisory board and employees of the Company.

Section 28

(1) The labour-law status of the employees shall be governed by the Code of Labour, further - within the framework of the former - the deed of association (company statutes) and the employment contract; their liability shall be governed by the CA and the Code of Labour.

(2) The trade union rights are governed by the Code of Labour and other legal regulations issued on the strength of the latter.

Section 29

The statutory rules relating to the regulation of wages and the material (financial) interest system of those in leading position (executive officers) shall only apply to such companies in which the size of the foreign stake is lower than 20 percent, respectively five million forints.

Section 30

The property of the Company shall be expressed and its books shall be kept in forints - with the exception of Companies active in duty-free zones (off-shore companies). The value of the non-pecuniary contribution supplied by the foreign investor shall be registered in forints on the basis of the currency valid at the foreigner's seat.

Section 31

(1) The Company's transactions in foreign currencies and foreign exchange as well as its settlements of this type fall under the same rules as those applicable to other domestic economic organizations

(2) Any conversion of forints into foreign currency and vice versa, in connection with the foundation, operation and liquidation of the Company shall be effected at the current, valid rate of exchange, officially quoted by the National Bank of Hungary. The same applies to the transfer of any sum by the foreigner to the benefit of the Company as well as to the transfer by the Company to the foreign member - under any title whatsoever.

(3) The Company may keep the foreign member's cash contribution made in convertible currency on its own account, in the currency of the actual payment. The Company may freely use such sums for procuring means of production, spare parts and durable assets needed for its activities. Means of production paid from this account may be imported to the country free of customs duty.

Section 32

(1) Any share due to the foreigner from the profit of the Company, further any amount due to the foreigner in the case of termination of the Company or the assignment (alienation) of the foreign share - completely or partly - shall be freely transferable abroad upon the relative instruction by the foreigner, to this effect in the currency of the investment - provided the Company possesses the proper cover.

(2) In the case of the termination of the Company, the commitments charging the foreigner must be met before such transfer can be made.

Section 33

The foreign executive officers, managing members, members of the supervisory board and the foreign employees of the Company may freely transfer abroad, in the currency of the country of their permanent domicile, fifty percent of their after-tax incomes received from the Company and paid to the Company's bank.

Section 34

Whenever a statutory rule makes an activity subject to official permit for the Hungarian economic organizations, such permit shall also be acquired by the Company - regardless of the permit defined in section 9, para. (2).

Section 35

Unless the present Act provides otherwise: those non-civil-law provisions connected with its economic activity shall not be applicable to the Company which are exclusively governing the State-owned economic organizations and co-operatives in their quality as such.

Section 36

Banks may undertake a guarantee, subject to the usual banking terms, for the Company's commitments towards the foreign member, deriving from his membership.

CHAPTER IV
COMPANIES OPERATING IN DUTY-FREE ZONES
(OFF-SHORE COMPANIES)

Section 37

(1) A company founded by a foreigner or with foreign participation may also be established in a duty-free zone (off-shore company); moreover foreigners may acquire a share in such a company. However, no union may be established in a customs-free zone.

(2) This Act shall apply - with the modifications and completions specified in the present Chapter - to the foundation of an off-shore company, to the acquisition of a share in, and the operation of, such a company.

(3) The terms and conditions of the technical delimitation of a duty-free zone, of the erection of projects and carrying on activities in such zones, further the rules of passenger and goods traffic to and from such zones, are contained in the statutory rules relating to customs law and customs clearance.

Section 38

A duty-free zone shall be deemed as foreign territory from the aspect of the customs, foreign-exchange and foreign-trade regulations, the latter, however, with the modifications of section 39 herebelow. An off-shore company shall be deemed a foreign company from the aspect of the said statutory rules. Accordingly: the statutory rules relating to price regulation, further to State auditing are not applicable to off-shore companies.

Section 39

(1) The provisions in international agreements entered into by the Hungarian People's Republic relating to foreign trade, further the export and import prescriptions covering certain countries or certain goods shall also be applicable to off-shore companies .

(2) inasmuch as an international agreement entered into by the Hungarian People's Republic has determined the type or volume of exported or imported goods, the permit of the Minister of Trade is required before an off-shore company can transact foreign-trading activity with certain goods or with countries covered by such international agreements.

Section 40

Before an off-shore company can be entered in the Trade Register, it has to submit the decision of the Minister of Finance testifying that the real estate at which the Company plans to display its activities has been declared a duty-free zone.

Section 41

(1) The off-shore company shall keep its accounts--with the exception defined in para. (2) herebelow--in the convertible currency determined in the deed of association (company statutes).

(2) The Minister of Finance may decree that certain accounts shall be kept and the balance-sheet be drawn up in forints.

(3) The Company shall make its transactions in a convertible currency--subject to the exceptions as provided for in section 42 of this Act and granted occasionally by the Minister of Finance.

(4) The off-shore company

(a) shall keep its foreign currency and foreign-exchange assets as long as they do not exceed the amount of its property at foundation (primary stock, registered capital) with an inland financial institution the excess assets may be kept either with an inland or with a foreign financial institution;

(b) may raise credits both from inland sources and from abroad;

(c) may freely dispose of its assets deposited in Hungary or abroad in freely convertible currencies.

Section 42

(1) The off-shore company shall purchase the Forint amount needed for its establishment and operation from a Hungarian financial institution against convertible currency. The Forint amount shall be kept in an account with a Hungarian financial institution.

(2) The following items shall be disbursed from the account mentioned in para. (1):

(a) public dues (taxes, etc.)

(b) wages and other bonuses of the employees, the contributions attached to the former;

(c) fees for the use of land (rent) and for the public utilities, further

(d) purchases in retail trade, construction, assembly, repair works and the like; as well as the equivalent of any other acquisition and service, not within the proper functions of the Company, but necessary for its establishment and operations, due to Hungarian private individuals and economic units not vested with foreign trading rights.

Section 43

The Minister of Finance may grant the benefits due to off-shore companies also to non-off-shore companies operating fully or partly with foreign participation, provided the Company does not transact any activity involving the transit of goods across the border. Such a financial institution may be qualified as foreign.

CHAPTER V
CLOSING PROVISIONS

Section 44

Either an inland or a foreign regular court or arbitration court may proceed in legal disputes of companies with foreign participation relating to the deed of association, provided this has been stipulated in writing by the founders, respectively members, of the company.

Section 45

The present Act shall enter into force on the 1st of January, 1989; simultaneously, Section 11/c of the Decision of the Council of Ministers No. 1016/1985 (III.2.) shall be amended as per Section 5 of this Act.

Section 46

(1) The provisions of this Act

(a) shall be applicable to the companies with foreign participation, already functioning upon the entering into force of the Act, with the exception of the rules relating to the permit proceedings (sections 10 and 11);

(b) shall be applied also in the cases already filed, with the proviso that the ninety days' deadline for the administration proceedings (cf. section 9, para. 2.) shall start on the 1st of January 1989.

(2) The permit deeds issued prior to the entering into force of the Act shall remain In force.

(3) The tax allowances (benefits) granted to companies with foreign participation prior to the entering into force of the Act may be retained - until their expiry - from the calculated tax, up to the amount of the latter.

Section 47

The present Act shall not affect those enactments which refer to the establishment of banks of financial institutions with foreign participation (cf. Act II: 1979, section 34).

In the case of an establishment of such a bank or financial institution the full value of its shares shall be paid up - contrary to the provisions of section 264, para (l) of the CA - within three years from the registration of the company limited by shares in the Trade Register.

Appendix "D"

Useful Addresses in Bulgaria

Bulgarian Government Institutions

Prime Minister
Bul."Dondukov" 1, 1194 Sofia
Tel: (3592) 85 01, 87 63 77
Fax: (3592) 88 17 59, 87 68 55
Tlx: 22281, 22378

Ministry of Industry
8 Slavyanska St.
Tel: (3592) 87 07 41, 88 33 10
Fax: (3592) 89 76 05
Tlx: 23490

Ministry of Agriculture
55 Christo Botev Blvd., 1040 Sofia
Tel:(3592) 85 31, 88 17 90
Fax:(3592) 80 06 55
Tlx: 23166

Ministry of the Environment
Ul. "Vl. Poptomov" 67, 1000 Sofia
Tel: (3592) 87 61 51
Fax: (3592) 52 16 34
Tlx: (865) 22145

Ministry of Finance
Ul. "Rakovski" 102, 1040 Sofia
Tel: (3592) 87 06 22, 86 93 55
Fax: (3592) 88 12 07, 87 05 81, 80 11 48
Tlx: 22727

Ministry of Foreign Affairs
Ul. "Al. Shendov" 2, 1113 Sofia
Tel: (3592) 714 31, 714 41
Fax: (3592) 87 21 03, 70 93 92
Tlx: 22530, 22531

Ministry of Industry
Ul. "Slavyanska" 8, 1000 Sofia
Tel:(3592) 87 07 41, 88 33 10
Fax:(3592) 89 76 05
Tlx: 23490

Ministry of Commerce
Ul. 8 Slavyanska, 1000 Sofia
Tel: (3592) 87 07 41, 88 01 63
Fax: (3592) 89 76 05
Tlx: 23490

Ministry of Transport
Ul. "V. Levski" 9, 1000 Sofia
Tel: (3592) 87 10 81, 87 49 42
Fax: (3592) 88 50 94
Tlx: 23209

Ministry of Justice
Bul. "Dondukov" 2, 1000 Sofia
Tel: (3592) 86 01, 97 07 09
Fax: (3592) 867 32 27
Tlx: 23822

Ministry of Education, Science and Culture
Bul. "Stamboliyski" 17, 1000 Sofia
Tel: (3592) 86 111, 87 30 44
Fax: (3592) 87 73 39
Tlx: 22652, 22715

Ministry of Health
5 Sv. Nedelya Sq., 1000 Sofia
Tel.(3592) 86 31, 88 08 81
Fax.(3592) 80 00 31
Tlx. 23654, 22430

Ministry of Labour and Social Welfare
Ul. "Trijadiza" 2, 1000 Sofia
Tel. (3592) 86 01
Fax. (3592) 867 23 77
Tlx. 23173

Ministry of Territorial Development, Housing and Construction
17-19 Kiril i Metodei St., 1000 Sofia
Tel: (3592) 83 841
Fax: (3592) 87 25 17
Tlx: 22182, 22314

Ministry of the Interior
29 Shesti Septemvri St., P.O. Box 192, 1000 Sofia
Tel: (3592) 82 25 74, 82 26 89
Fax: (3592) 88 54 40
Tlx: 22694

Ministry of Defence
1 Aksakov St., 1000 Sofia
Tel: (3592) 54 60 01
Fax: (3592) 87 57 32
Tlx: 22649

Useful Addresses For Other Services

Bulgarian Chamber of Commerce and Industry (BTPP)
Bul. "Al. Stamboliyski" 11-A, 1000 Sofia
Tel: (3592)872-631
Tlx: 22374
Fax: 873 209

Stopanska Kamara (Industrial Chamber)
Ul. "Eksarkh Yossif" 14, 1000 Sofia
Tel: (02)84-21, 87-84-17
Tlx: 23523, 23607
Fax: 872604

Bulgarreklama Agency
Ul. Parchevich 42, 1040 Sofia
Tel: 8-51-51
Tlx: 22318

Bulstrad
Ul. "Dunav", 1000 Sofia
Tel: 8-51-91
Tlx: 22564

Arbitration Court
Bul. Stamboliiski 11 A, 1040 Sofia
Tel: (02) 87-26-31
Tlx: 22347
Cable: Torgpalata

International Plovdiv Fair Economic Enterprise
Bul. G. Dimitrov, 4018 Plovdiv
Tel: (032) 5-31-91; 5-43-21
Tlx: 44432

Patent & Trademark Bureau of the Chamber of Commerce and Industry
Bul. Stamboliiski 11 A, 1040 Sofia
Tel: 87-26-31
Tlx: 22347

Useful Addresses in the Czech Republic

1. Government of the Czech Republic
   Prime Minister: Vaclav Klaus
   Deputy Prime Minister: Jan Kalvoda
   Nabrezi Edvarda Benese 4
   125 09 Praha 1
   tel: 2102111, 24002111
   fax: 2311446, 24810231

2. Ministry of Finance
   Minister/Deputy Prime Minister: Ivan Kocarnik
   Letenska 15
   118 10 Praha 1
   tel: 5141111, 24541111
   fax: 51427788, 24542788

3. Ministry of Agriculture
   Minister/Deputy Prime Minister: Josef Lux
   Tesnov 17
   117 05 Praha 1
   tel: 286 21 11, 24810478
   fax: 24810478

4. Ministry of Foreign Affairs
   Minister: Jozef Zieleniec
   Loretanske namesti 5
   125 10 Praha 1
   Tel: 2193 1111, 24181111
   fax: 3110233, 24310016

5. Ministry of Economy
   Minister: Karel Dyba
   Vrsovicka 65
   101 60 Praha 10
   tel: 7121111, 67121111
   fax: 742304, 67312024

6. Ministry of Industry and Trade
   Minister: Vladimir Dlouhy
   Na Frantisku 32
   118 80 Praha 1
   tel: 2851111
   fax: 2318544, 24811089

7. Ministry of Administration of National Property and its Privatisation
   Minister: Jiri Skalicky

Lazarska 7
110 00 Praha 1
tel : 2130111, 24191111
fax : 2350932, 24215984

8. Ministry of Labour and Social Affairs
Minister: Jindrich Vodicka
Na Poricnim Pravu 1
120 00 Praha 2
tel: 213 51 11, 24902111
fax: 2365468, 24224640

9. Ministry of Justice
Minister: Jiri Novak
Vysehradska 16
128 11 Praha 2
tel: 29 45 45, 24915140, 24915228
fax: 29 90 64

10. Ministry of Environment
Minister: Frantisek Benda
Vrsovicka 65
100 10 Praha 10
tel: 712 11 11, 67121111
fax: 73 13 57, 67310308

11. Ministry of the Interior
Minister: Jan Ruml
Nad Skolou 3
170 00 Praha 7
tel: 335 11111
fax: 38 17 69

12. Ministry of Culture
Minister: Jindrich Kabat
Valdstejske Namesti 4
118 11 Praha 1
tel: 513 11 11
fax: 53 25 21, 53 63 22, 53 05 21

13. Ministry of Health
Minister: Jindrich Rubas
Palackeho namesti 4
128 01 Praha 1
tel: 24971111
fax: 24971111

14. Ministry of Education, Youth, and Physical Education

Minister: Petr Pitha
Karmelitska 5, 7, 8
128 12 Praha 1
tel: 5193111
fax: 53 13 22, 53 15 97, 53 17 96, 24510860

15. Czech Ministry of Economic Competition
Minister Entrusted With the Direction of the Office: Stanislav Belehradek
Lazarska 7
110 00 Praha 1
tel: 2130111, 24191111
fax: 2351315, 24216225

16. Czech Office of Press and Information
Benediktska 1
110 00 Praha 1
tel : 231 09 34

17. State Arbitration of Czech Republic
Francouzska 19
120 63 Praha 2
tel : 25 82 44

18. City Counsel of Prague, Capital
Marianske namesti 2
110 00 Praha 1
tel : 2831111, 24811683

Useful Addresses in the Slovak Republic

1. The Chancery of the President
President: Michal KOVAC
Bratislavsky hrad, 800 00
tel: 312 500

2. Office of Government
Prime Minister: Vladimir Meciar
Deputy Prime Minister: Roman Kovac
Deputy Prime Minister (also responsible for the Ministry of Foreign Affairs): Milan Knazko
Nam. Slobody 1, 813 70
tel: 415 111
fax: 497 595

3. Ministry of Finance
Minister: Julius Toth
Stefanovicova 5, 813 08

tel: 43 111
fax: 498 042

4. Ministry for the Administration of National Property and its Privatisation
Minister: Lubomir Dolgos
Drienova 24, 820 09
tel: 299 7111
fax: 294 536

5. Ministry of the Economy
Minister: Ludovit Cernak
Mierova 19, 827 15
tel: 299 81 11
fax: 237 827

6. Ministry of Agriculture
Minister: Peter Baco
Dobrovicova 12, 812 66
tel: 363 723
fax: 578 34

7. Ministry of Transport, Communications and Public Works
Minister: Roman Hofbauer
Mileticova 19, 820 06
tel: 672 36
fax: 254 800

8. Ministry of Labour, Social Affairs and the Family
Minister: Olga Keltosova
Spitalska ul. 4, 816 43
tel: 300
fax: 512 58

9. Ministry of Health
Minister: Viliam Sobona
Spitalska 6, 813 05
tel: 300
fax: 575 08

10. Ministry of Culture
Minister: Dusan Slobodnik
Dobrovicova 12, 812 31
tel: 368 781
fax: 326 381

11. Ministry of Justice
Minister: Katarina Tothova

Zupne nam. 13, 813 05
tel: 353 111
fax: 315 952

12. Ministry of the Interior
Minister: Jozef Tuchyna
Pribinova ul. 2, 812 72
tel: 206 11 11
fax: 50 095

13. Ministry of Environment
Minister: Jozef Zlocha
Hlboka 2, 812 35
tel: 492 451
fax: 311 368

14. Ministry of Defense
Minister: Not appointed
Kutuzovova 7, 831 03
tel: 2799
fax: 258 871

15. Ministry of Education and Science
Minister: Matus Kucera
Hlboka ul. 2, 813 30
tel: 491 811
fax: 497 098

16. Slovak Office of Statistics
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17. Slovak Anti-Monopoly Institute
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18. Agency for Foreign Investment and Development
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19. Chamber of Commerce and Industry
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Ministry of the Interior
Jazsef Attila u. 2-4.
1051 Budapest,
Tel: 112-1710

Ministry of Defence
Balaton utca 7-11
1055 Budapest,
Tel: 132-2500

Ministry of Justice
Szalay u. 16.
1055 Budapest,
Tel: 132-6170

Ministry of Industry and Trade
Mrtrok atja 85.
1024 Budapest,
Tel: 156-5566

Ministry of Labour
Roosevelt ter 7-8
1051 Budapest
Tel: 132-2100

Ministry of International Economic Relations
Honved u. 13-15.
1055 Budapest,
Tel: 153-0000

Ministry of Finance
Jazsef ndor ter 2-4.
1051 Budapest,
Tel: 118-2066

Ministry of Environment Protection
F u. 44-50.
1011 Budapest,

Tel: 201-4133

Ministry of Transport, Telecommunications
and Construction
Dob u. 75-81.
1077 Budapest,
Tel: 122-0220

Ministry of Foreign Affairs
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1027 Budapest,
Tel: 156-8000

Ministry of Agriculture
Kossuth Lajos ter 11.
1055 Budapest,
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Ministry of Culture and Education
Szalay u. 10-14.
1055 Budapest,
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Ministry of Social Welfare
Arany Jnos u. 6-8.
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Tel: 132-3100

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National Planning Office
Roosevelt ter 7-8.
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Tax and Financial Supervisory Office
Szechenyi u.2.
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National Authority of Wages and Labour
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Tel: 132-2100

Hungarian National Office for
Translations and Attestations

Bajza u. 52.
1062 Budapest,
Tel: 112-9610

Hungarian Inland Revenue Office
Szechenyi u.2.
1054 Budapest,
Tel: 112-1896

Budapest Chamber of Law
Szalay u.7.
1055 Budapest,
Tel: 153-0155

Hungarian Post
Krisztina krt. 6-8.
1122 Budapest,
Tel: 179-0750

Hungarian Bureau of Standards
Ili u. 25.
1091 Budapest,
Tel: 118-3011

National Patents Office
Garibaldi u.2.
1054 Budapest,
Tel: 112-4400

Investcenter Office for Investments Promotion
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Chief Administration for Social Security
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Bajcsy Zsilinszky u. 36-38.
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Hungarian Customs Administration
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