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May 16, 1995

Mr. Wade Dewitt  
Document Acquisitions  
POL/CDIE/DI  
Room 303 SA-18  
USAID  
Washington, DC 20523-1803



Dear Wade Dewitt:

Enclosed are the quarterly reports for BOA ANE-0015-B-001019-00 and related buy-ins, with annexes, for the period January 1 - March 31, 1995. A diskette with the reports in WordPerfect 5.1 format is also enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Christopher Bartlett".

Christopher Bartlett  
Associate Director

## **Institutional Reform and the Informal Sector (IRIS) Project**

**Quarterly Report: January 1 - March 31, 1995**

### INTRODUCTION

The Institutional Reform and the Informal Sector (IRIS) Project was authorized on May 24, 1990 through a cooperative agreement between the U.S. Agency for International Development (USAID) and the IRIS Center at the University of Maryland at College Park. An accompanying basic ordering agreement allows for AID Missions to buy into the technical assistance activities, to meet objectives specific to the respective country. The goal of the IRIS project is to support institutional reforms that enhance competitive markets and democratic processes. The purpose of the Core cooperative agreement is three-fold and includes the following:

- To promote better institutions (legislative reform, regulatory reform, improved organizational structures, and strengthened decision-making processes):
- To build awareness of the role of institutions in economic development; and
- To expand the knowledge base on the relationship between institutions and economic growth and examine new approaches to institutional reform.

The objectives of both the cooperative agreement and the respective basic ordering agreements are met with a variety of project inputs, defined by their appropriateness to the specific needs of a country or the international development community at large. Organizational development objectives are addressed through publications, workshops, technical assistance, and training. Collaborative research objectives call for designing technical assistance packages. Training needs are met with short term in-country and third-country programs, short-term US programs and/or internships. Information dissemination and outreach objectives are addressed through the IRIS clearing house and the IRIS newsletter. The development of a knowledge base for strategic approaches is furthered through working papers, books, monographs, articles, conferences, workshops, and seminars.

The status of project interventions and the resulting impact is reported to USAID on a quarterly basis, as defined in the cooperative agreement and nine (9) delivery orders currently in effect. The following report provides an overview of project activities and impact for the core project (Section One) and the respective field projects (Section Two) for the period January 1 - March 31, 1995.

## SECTION ONE: CORE REPORT

### I. PROGRESS TOWARD ACHIEVING PROJECT PURPOSES: FIELD PROGRAMS

#### A. Promoting better institutions

##### 1. Legislative reform initiatives

##### a. Plans for reporting quarter

- **Bulgaria: Collateral Law.** A long-term advisor would be hired to support this project.
- **Lithuania: Collateral Law.** IRIS would establish and staff an office in Lithuania to support this reform.
- **Macedonia: Collateral Law.** A long-term advisor would be hired to support this project.
- **Nepal: Company Law.** IRIS/Nepal would support the tabling of the Law, which will depend on action by the Ministry of Industry.
- **Nepal: Consumer Protection Act.** IRIS/Nepal would support the tabling of the Law, which will depend on action by the Ministry of Supplies.
- **Nepal: Contract Law.** The completion of the draft law -- delayed by the participation of IRIS's partner in this reform, the Nepal Law Society, in election monitoring -- was expected in February 1995.
- **Poland: Collateral Law.** At request of Deputy Minister of Justice Zieliński, IRIS would organize a major conference in February to promote the draft law.

##### b. Activities during quarter

- **Bulgaria: Collateral Law.** Candidates for the LTA position in Sofia were being interviewed
- **Lithuania: Collateral Law.** The IRIS Lithuania Collateral Law Project commenced in January 1995. IRIS-Lithuania provided Working Committee members with translated materials and conducted periodic "primer" sessions designed to familiarize the members with important concepts in secured transactions. Starting in March, IRIS-Lithuania began to play a catalyzing role with regard to inter-donor and inter-governmental coordination of activities in the area of secured transaction law development.
- **Macedonia: Collateral Law.** Candidates for the LTA position in Skopje were being interviewed at the end of the quarter. A letter to the Macedonian Minister of Justice has been drafted.
- **Nepal: Company Law.** The new Government has decided to push ahead with this legislation in the next session of Parliament, which begins in June.
- **Nepal: Consumer Protection Act.** This is a top priority for the new Government for the June session.

- **Nepal: Contract Law.** The Policy Dialogue Committee is working to identify client Ministry. Final draft of legislation to be completed in the next quarter.
- **Poland: Collateral Law.** An IRIS conference, held on 27 February 1995 and organized on behalf of the Polish Minister of Justice, Włodzimierz Cimoszewicz, was attended by 250 persons and received major media coverage. Following the conference, the Polish Ministry of Finance agreed to abandon its "secret tax lien," strengthening collateral law reform in Poland. The draft Collateral Law moved to the next stage of the parliamentary process, with submission to the Economic Committee of the Council of Ministers. IRIS has also assisted Poland in planning and implementing a central pledge registry, a key part of collateral reform. On April 3, 1995, the Polish Ministry of Justice signed a contract with Norway Group, with which IRIS has worked closely since May 1994, to implement Phase I of the Polish Central Registries Project.
- **Egypt.** A curriculum for a one-day seminar on competition policy for government officials visiting the United States was being developed, along with an annotated list of readings.
- **Morocco.** Work continued on defining the scope of a proposed assistance project on competition and consumer protection laws.

**c. Plans for next quarter**

- **Bulgaria, Macedonia.** The hiring of LTAs and local staff and the opening of offices will be completed.
- **Lithuania: Collateral Law.** IRIS/Lithuania will obtain "nutarimas" from the Lithuanian government, making the Work Group officially responsible for reforms related to movable property. The Work Group will be expanded to include drafters of current hipotekas law and members of the Lithuanian Commercial Bankers' Association. An inventory of conflicting statutory and regulatory provisions and legislative initiatives will be produced.
- **Nepal: Company Law.** IRIS will support the tabling of the Company Law by the Ministry of Industry, expected in July 1995.
- **Nepal: Consumer Protection Act.** IRIS will support the tabling of this Act by the Ministry of Supplies, also expected in July 1995.
- **Nepal: Contract Law.** The Nepal Law Society is expected to complete a draft law in June.
- **Poland: Collateral Law.** IRIS will continue to assist John Olaison of the Norway Group in realization of the central registry project. IRIS will work on engaging the Council of Ministries as it considers the draft Collateral Law as the head of the project. IRIS may organize an inter-ministerial workshop under

auspices of the Council of Ministries and the World Bank to discuss various aspects of the Central Registry project.

2. Regulatory reform activities

**a. Plans for reporting quarter**

- **Mongolia: Anti-monopoly Law Implementation.** IRIS/Mongolia would provide technical assistance on the further development of procedures for implementing the Law on Prohibiting Unfair Competition.
- **Nepal: Banking Reform.** IRIS/Nepal would continue to support this reform.
- **Poland: Intellectual Property Reform.** IRIS would work with the Institute for the Protection of Intellectual Property at the Jagiellonian Institute to produce Polish-language versions of the model technology commercialization contracts.

**b. Activities during quarter**

- **Mongolia: Anti-monopoly Law Implementation.** Work on developing procedures for enforcement of the Law on Prohibiting Unfair Competition awaits availability of William Kovacic, a consultant who consulted on drafting of the law.
- **Nepal: Credit Rating Agency.** The new Government is not interested in pursuing the establishment of this agency.
- **Poland: Intellectual Property Reform. Internet.** NASK, the Polish Internet system, formally announced a policy initiative to provide more service to commercial users in order to reduce the cost of Polish government subsidies of the system. Former Minister of Science, Dr. Witold Karczewski, has agreed to become an IRIS consultant and work on these issues. IRIS consultant Adam Wasilewski was hired by USAID-Warsaw to do a study on how to connect USAID contractors in Poland to the Internet.
- **Poland: Intellectual Property Reform. Model Contract Project.** IRIS-Central Europe signed a contract with the Institute for the Protection of Intellectual Property at the Jagiellonian University to complete the Polish half of the Model Contracts book. The English half was republished by the Polish State Committee for Scientific Research on March 15.

**c. Plans for next quarter**

- **Mongolia.** IRIS/Mongolia will conduct follow-up technical assistance on implementation of the Law on Prohibiting Unfair Competition.
- **Nepal: Central Depository System at the Nepal Stock Exchange.** The Policy Dialogue Committee is to review this commitment after the Annual General

Meeting of the Stock Exchange, which is expected to implement IRIS recommendations.

- **Poland: Intellectual Property Reform. Model Contract Project.** A manual of model contracts for technology commercialization will be completed in the beginning of May. A preprint version will be available immediately. Efforts will be made to have it printed by KBN during this quarter.

3. Improved organizational structures

a. Plans for reporting quarter

- **Mongolia: Insurance Law.** IRIS/Mongolia would support the drafting of a new law on general insurance issues, including the establishment of solvency regulation.

b. Activities during quarter

- **Mongolia: Insurance Law.** Work on providing assistance to drafters of a new insurance law was delayed by a change in personnel in the Ministry of Finance; work will resume in the next quarter.

c. Plans for next quarter

- **Mongolia: Insurance Law.** IRIS will assist in developing a general insurance law and regulatory framework.

4. Strengthened decision-making processes

a. Plans for reporting quarter

- **India: Enhanced dialogue on policy reform.** The review and revision of the policy papers commissioned under the IRIS/India scholars program would be completed in March 1995 and published in the IRIS-India Working Paper Series. Preparations would be made for launching the Comprehensive IRIS/India Policy Research Program, a Distinguished Speaker Conference to be held in January 1996, and a June 1996 video teleconference.
- **Mongolia: Environmental Policy.** IRIS/Mongolia would present a workshop on environmental policy in Ulaanbaatar during February 1995. IRIS/Mongolia would also develop a workshop curriculum for selected journalists on the use of economics in reporting and begin preparations and background research for sixth workshop on corporate governance.
- **Russia: Collateral Law.** EBRD and IRIS would publish the November conference proceedings in February.
- **Russia: Civil Code.** The Russian translation of the UCC would be edited for Spring 1995 publication.

#### **b. Activities during quarter**

- **India: Enhanced dialogue on policy reform.** Sponsored policy papers were reviewed, and collaboration began with between IRIS and a leading, and highly influential Indian research institute, the National Institute of Public Finance and Policy (NIPFP), including preparation for various program activities as well as solicitation of new policy analysis proposals.
- **Mongolia: Environmental Policy.** A February workshop in Ulaanbaatar provided approximately thirty Mongolian decision-makers with exposure to a full range of tools available for effective environmental policy making and a special focus on the use of market incentives for achieving environmental goals. Two Western specialists in environmental policy assisted the IRIS staff in presenting sessions. Participants expressed interest in continuing IRIS assistance in this area, especially in developing air quality regulations in Ulaanbaatar that make extensive use of market incentives.
- **Russia: Civil Code.** Civil Code drafters from across the CIS gathered in Leiden and St. Petersburg this quarter to develop Part II of a Model Code, using the Russian, Ukrainian, Belarusian, and Kazakhstani drafts as models. Lawyers from IRIS provided advice on Western law.
- **Russia: Collateral Law.** EBRD and IRIS prepared the conference proceedings for publication.

#### **c. Plans for next quarter**

- **India: Enhanced dialogue on policy reform.** Activities for next quarter include publishing policy papers in IRIS-India Working Paper Series, solicitation of policy analysis proposals and commissioning of papers, planning of Distinguished Speaker Conferences to be held in November 1995 and January 1996, planning of Indo-American scholarly exchange program, and preparations for video teleconference on "Democracy and Economic Development: Friends or Enemies?"
- **Mongolia.** IRIS will conduct a fifth workshop, on economics for the media, and begin preparations and background research for sixth workshop on corporate governance.
- **Russia: Civil Code.** IRIS/Russia and the Research Center on Private Law will complete the translation and publication of the Uniform Commercial Code. May workshops will provide Russian law-makers with assistance on drafting Part II of the Civil Code, including banking, sales, and leasing.
- **Russia: Civil Code.** The Russian translation of the UCC will be published this Spring.

**B. Disseminating information to build awareness of the role of institutions in economic development**

1. Forums, conferences, presentations

**a. Papers presented at Scholarly Meetings by IRIS staff and consultants:**

Satu Kakhonen (American Economic Association, Washington, DC, January 6)  
Session chair: "The End of the Middle Way? The Large Welfare States of Europe."

Mancur Olson (American Economic Association, Washington, DC, January 7)  
"The Devolution of the Nordic and Teutonic Economies"

Mancur Olson (Harvard University, Russian Research Center, February 6)

James Anderson (English for Special Purposes Institute, UlaanBataar) "The  
"Institutions of a Market Economy."

Mancur Olson (Warsaw, Conference on Collateral Law, February 27) "Contract  
Law, Capital Accumulation, and Economic Development."

Professor J. A. Spanogle (Warsaw, Conference on Collateral Law, February 27)  
"Secured transactions -- Western experience."

Mancur Olson (NBER/CREI conference on Growth and Political Institutions,  
March 31) "The Economics of Autocracy and Majority Rule."

Peter Murrell (American Economic Association, Washington, DC, University of  
Wisconsin, University of Delaware, University of Pennsylvania, Yale  
University) "The Effects of History, Ownership, and Pre-Privatization  
Restructuring on Post-Privatization Governance", co-authored with Georges  
Korsun.

Two TV programs on intellectual property and on bankruptcy, co-produced  
with Polish Television, were completed, edited, and approved during the  
quarter. The intellectual property film, *SUPEZ*, was shown at a premiere to  
seventy-five persons from USAID and the scientific community on March 17,  
1995. Nationwide broadcasting, with an expected audience of four million, is  
scheduled for 10:10 pm on April 25. The collateral law film *How to Make  
Money on Bankruptcy* was premiered at the collateral law conference and is  
expected to broadcast in May. Both films are having English subtitles added so  
that they can be shown in other countries.

The Ministry of Justice and IRIS organized a one-day international conference  
to discuss the Polish Draft Collateral Law, attended by 250 people (February  
27).

IRIS sponsored a conference on regional constitutions in the Russian Federation in Moscow, March 13-17. Charles Cadwell, David Fagelson, Leonid Polishchuk, Peter Ordeshook, and Robert Rafuse were among the participants who shared their expertise in a variety of issues of economics and politics of federal state, including intergovernmental fiscal relations, social programs, and legal and constitutional foundations. The intricacies of drafting regional constitutions for the Russian regions were in the center of the discussion. The process of the Russian constitutional reform was considered in a comparative perspective, using the American experience as a basis for comparison.

A conference in Moscow, titled "Russian Reforms: Established Interests and Practical Alternatives" is scheduled to take place on April 12-15, 1995, is planned as a broad forum to discuss causes and consequences of the fragmentation of the Russian institutional and economic fabrics, and to outline policy alternatives reflecting the role of the interest groups in the Russian society.

**b. Training Provided to Scholars from LDCs and the NIS:**

Thirty Mongolian decision-makers with responsibilities for environmental policy-making attended a two-week workshop in Ulaanbaatar in February 1995. Workshop faculty also consulted with MPs Ochirkhuu, Urtnasan, Norovsambuu, and Gan-Ulzii on the content of Mongolia's draft General Environmental Law.

2. Publications

**a. Working papers:**

Satu Kahkonen, "Should Foreign Aid Finance Private or Public Investment?," IRIS Working Paper No. 146, January 1995.

Georges Korsun and Peter Murrell, "The Effects of History, Ownership, and Pre-Privatization Restructuring on Post-Privatization Governance," IRIS Working Paper No. 147, January, 1995.

Aseem Shrivastava, "Deforestation in Colonial Kumaon: 1815 - 1947," IRIS Working Paper No. 148, February 1995.

Ramon Lopez and Leslie A. Whittington, "Contraception and the Income-Fertility Relationship," IRIS Working Paper No. 149, February 1995.

Roger R. Betancourt and Margaret Malanoski, "Prices, Distribution Services and Supermarket Competition." IRIS Working Paper No. 150, February 1995.

Christopher Clague, Philip Keefer, Stephen Knack, and Mancur Olson, "

Contract-Intensive Money: Contract Enforcement, Property Rights and Economic Performance." IRIS Working Paper No. 151, February 1995.

Thierry van Bastelaer, "A Collective Action Inquiry into the Political Economy of Food Pricing." IRIS Working Paper No. 152, March 1995.

**b. IRIS Reprints:**

Hal R. Varian, "A Solution to the Problem of Externalities When Agents are Well-Informed." *The American Economic Review*, Vol. 84 No. 5, December 1994, pp. 1278-1293. IRIS Reprint No. 51.

Alexander S. Bim, Derek C. Jones and Thomas E. Weisskopf, "Privatization in the Former Soviet Union and the New Russia," ch. 11 in *Privatization in Central and Eastern Europe*, edited by Saul Estrin, Longman, London, 1994. IRIS Reprint No. 52.

Derek C. Jones and Charles Rock, "Privatization in Bulgaria," ch. 13 in *Privatization in Central and Eastern Europe*, edited by Saul Estrin, Longman, London, 1994. IRIS Reprint No. 53.

Christopher Clague and David Greenaway, "Incidence Theory, Specific Factors and the Augmented Hecksher-Ohlin Model." *The Economic Record*, Vol. 70, No. 208, March 1994, pp. 36-43. IRIS Reprint No. 54.

Jack H. Nagel, "How Many Parties Will New Zealand Have Under MMP?" *Political Science*, Vol. 46, No. 2, December 1994, pp. 139-160, IRIS Reprint No. 55.

Barry R. Weingast, "The Political Foundations of Democracy and the Rule of Law." MSI, April 1993, pp. 1-49. IRIS Reprint No. 56.

Christopher Clague, "Bureaucracy and Economic Development." *Structural Change and Economic Dynamics*, Vol. 5, No. 2, December 1994, pp. 273-291. IRIS Reprint No. 57.

Louis Putterman, "Social Capital and Development Capacity: The Example of Rural Tanzania." *Development Policy Review*, Vol. 13 (1995), pp. 5-22. IRIS Reprint No. 58

Louis Putterman, "Economic Reform and Smallholder Agriculture in Tanzania: A Discussion of Recent Market Liberalization, Road Rehabilitation, and Technology Dissemination Efforts," *World Development*, Vol. 23, No. 2, pp. 311-326, 1995. IRIS Reprint No. 59

Peter Murrell, "The Transition According to Cambridge, Mass." *Journal of Economic Literature*, Vol 33, pp. 164-178, March 1995. IRIS Reprint No. 60

**c. IRIS Country Reports:**

None.

**C. Expanding the knowledge base on the relationship between institutions and economic growth and examining new approaches to institutional reform.**

**The IRIS Index Project:** During the first quarter of 1995 the Index Project finished up the work on "Contract-Intensive Money" (IRIS WP #151) and submitted it for publication. Work was continued on "Property and Contract Rights under Democracy and Dictatorship" which was presented at the Barcelona Conference March 31-April 1. Keefer and Knack finished a draft of their paper, "Property Rights, Inequality, and Growth" (IRIS WP #153). During the second quarter work has continued on the Barcelona paper and a revised version will be presented at the Berkeley meetings of the American Law and Economics Association, May 12-13. With further work it will shortly be ready to be submitted to a journal. The group is also working on two chapters for the planned IRIS book, Institutions and Economic Development, which should be ready to be sent to the publisher in June. Publication is planned before the end of the year. The book will contain, in addition to these two chapters based on Index work, chapters by Olson, Murrell and Korsun, Cadwell, and Clague.

Additional areas of on-going research by IRIS staff and fellows include an examination of the impact of caste on labor and tenancy markets in rural India (Anand Swamy); the relation between income and literacy growth in India (Swamy); the existence of scale and technical inefficiency in Indian firms and the impact of liberalization on such inefficiencies (Fikkert); the effects of regime type and duration on foreign direct investment (Fikkert); and several issues related to China's successful economic reforms, including industrial agglomeration and the effects of training and compensation on labor turnover (Fikkert). Mancur Olson has completed a study of differences between democracies and autocracies in taxation and expenditure patterns.

**II. PROJECT IMPACT**

**A. Achievements During Quarter.**

**Mongolia: Environmental Policy.** A working group of Mongolian government and NGO officials will be developing new, market-based air quality policies with the assistance of IRIS faculty. These officials are among those who attended a two-week IRIS workshop in Ulaanbaatar on Economics and Environmental Policy, which covered topics in legal, regulatory, and economic instruments for sound environmental policy-making. On the basis of the workshop, the officials recognized the need for market-based policies and requested further IRIS assistance.

**Mongolia: Insurance.** As a result of an IRIS-sponsored October 1994 workshop, Mongolian policy-makers are working to revise sections of the country's Civil Code related to insurance. These revisions will allow the tax deductibility of premia, so that they are treated like other business expenses, and subrogation, by which insurance companies can assume the policy-holder's right to collect damages from a third party. In addition, Basanjav (head of the Agricultural Insurance Company) is revising the company's undifferentiated premia and payouts, which prevent many from buying insurance and discourage policy-holders from taking adequate precautions.

**Poland: Collateral Law.** An IRIS conference, held on 27 February 1995 and organized on behalf of the Polish Minister of Justice, Włodzimierz Cimoszewicz, was attended by 250 persons and received major media coverage. The conference contributed directly to two important developments in the reform process. Following the conference, the Polish Ministry of Finance agreed to abandon its "secret tax lien," strengthening collateral law reform in Poland. On March 28, 1995, the draft Collateral Law that has been IRIS-Poland's focus since 1991 moved to the next stage of the parliamentary process, with submission to the Economic Committee of the Council of Ministers. The next and final stage is submission to the Polish Parliament. Because a central registry is a key part of collateral reform, IRIS has also assisted Poland in planning and implementing a central pledge registry. On April 3, 1995, the Polish Ministry of Justice signed a contract with Norway Group, with which IRIS has worked closely since May 1994, to implement Phase I of the Polish Central Registries Project.

Since the legal environment in which privatized companies and new companies must operate requires a modernized banking sector that makes credit available to entrepreneurs, the passage of the collateral law and implementation of the registry are important in Poland's transition to a market economy. The involvement of the Norwegian Central Registries Project will be particularly helpful to Polish reform because Norway has the most advanced central registry system in Europe, a legal system similar to Poland's, and a system that is self-financed--a big plus for the budget-strained countries of Central and Eastern Europe.

**Poland: Deposit Insurance.** On February 17, a Bank Deposit Insurance Fund law became effective in Poland. Since 1991, several USAID-financed programs, including IRIS, played important roles in helping the Poles develop this fundamental institution. A major aim of this assistance was to discourage the guarantee of 100% of all deposits in the hope of sparing the Polish banking system a debacle like the American Savings & Loan collapse. IRIS played a major role in mediating the relationship between the National Bank of Poland and the Ministry of Finance. The deposit insurance law represents the first step in the modernization of the Polish banking sector.

**Russia: Civil Code.** Part I of Russia's Civil Code became effective on January 1, marking a decisive break with past Soviet and Russian legislation by effectively guaranteeing both freedom of contract and protection of private property. IRIS provided

continuous advice to President Yeltsin's Research Center for Private Law, circulating copies of the draft Code among Russian and Western legal communities and holding fora where leading Western scholars could discuss the law with drafters, government officials, judges, and businesspeople.

**Russia: Civil Code.** IRIS provided technical guidance on the drafting of the Model Civil Code for the CIS which will serve as the fundamental reference point for the member nations as they develop their individual codes. IRIS lawyers advised on the legal intricacies of uniform commercial legislation among the republics. Compatible law in the economic sphere is essential for inter-regional trade and economic development. Civil code drafters from across the CIS gathered in St. Petersburg this quarter to develop Part II of the Model Code, using the Russian, Ukrainian, Belrusian and Kazakhstani drafts as models. The CIS Inter-Parliamentary Assembly adopted Part I of the Model Code last fall.

**B. Expanding IRIS's Effectiveness in Achieving Project Objectives**

**I. Exploration of New Mission Buy-In Activities**

**a. Plans for reporting quarter**

**Bangladesh.** Preparations for exploration visit by the IRIS/India Director, to be held during the following quarter.

**Egypt, Morocco.** Exploration trip in the field of competition.

**Eritrea, Ethiopia.** The AID missions would be contacted to discuss the adaptability of the IRIS/Chad lessons to these countries.

**Ghana.** Explore funding options for collaboration with the Institute of Economic Affairs in Ghana and develop options for cooperation with the Institute.

**India, Nepal.** Negotiations in view of renewal of buy-in contracts with missions.

**Indonesia.** IRIS would examine the options for a buy-in in Indonesia, where a program to evaluate the rule of law is being considered.

**Kazakhstan.** The AID mission would be approached and briefed on the appropriateness of the IRIS/Mongolia experience for the Central Asian Republics of the NIS.

**Sri Lanka.** Further communication with IRIS contacts in Sri Lanka, expected to result in an exploration visit to that country by the IRIS/India director.

**West Bank.** An IRIS team would travel to the West Bank to inaugurate the work on commercial law.

**b. Activities during quarter**

**Bangladesh.** No activity.

**Egypt.** Visit concluded; ongoing discussions with the Mission on the development of a competition policy assistance project.

**Ethiopia.** Explored mission plans to develop a high-level economic policy conference.

**Ghana.** Explored options for collaboration with the Institute of Economic Affairs.

**India.** A new India buy-in was signed March 16.

**Indonesia.** A potential conflict of interest with the firm to be evaluated precluded this project.

**Kazakhstan.** No activity.

**Nepal.** Discussions on the content of IRIS' future activities in Nepal with the Mission resulted in the submission of a PIO/T for contract renewal.

**Sri Lanka.** No activity.

**West Bank.** IRIS organized and sent to the field a team to assess the status and programming possibilities in commercial law. IRIS convened several roundtables in Washington and in the field, and produced a report and recommendations for USAID.

#### **c. Plans for next quarter**

**Bangladesh.** Preparations for exploration visit by IRIS/India Director and follow-on visit by IRIS/India Director and IRIS Director of Field Programs.

**Egypt.** IRIS plans to launch a new buy-in activity dealing with consumer protection and competition laws.

**Ethiopia.** Continue exploring with USAID/Ethiopia its needs for an institutional reform effort.

**Ghana.** Plan to continue communications with the Institute of Economic Affairs and explore funding options.

**Nepal.** Negotiations with Nepal Mission to develop a contract for renewal and extension of IRIS activities along the priority lines defined by AID.

**Kazakhstan.** Mission will be contacted and presented with Mongolia project output documents.

**Morocco.** Georges Korsun and IRIS consultant William Kovacic will travel to Morocco in May to conduct a study of the legal environment.

**Sri Lanka.** Preparations for exploration visit by IRIS/India director.

**West Bank.** Follow-on activities are now under discussion.

2. IRIS Seminar Series

**a. Plans for reporting quarter**

IRIS would complete the review of existing programs and develop a more detailed promotion plan. IRIS would discuss possible topics with AID and agree upon two or three for further development. The possibilities for holding the pilot seminar in the series in Kazakhstan or Cambodia would be explored.

**b. Activities during quarter**

No activities completed during this quarter.

**c. Plans for next quarter**

All activities projected for this reporting quarter are being deferred to the next quarter.

3. Updating Expertise Seminar for AID

**a. Plans for reporting quarter**

Written descriptions of potential topics would be developed as examples of seminars. These examples would be used to further target the needs of staff from AID's Economic Growth Center and other divisions.

**b. Activities during quarter**

Draft descriptions of potential seminar topics were written during the quarter. Less time was spent on this activity than anticipated, however, because the relative importance of this specific activity compared to others was downgraded during the course of the quarter.

**c. Plans for next quarter**

The drafts prepared last quarter will be updated as deemed useful by on-going evaluation of whether this or other activities best serve the IRIS mission.

4. Rule of Law/Governance Project

**a. Plans for reporting quarter**

The working paper would be completed.

**b. Activities during quarter**

During this quarter David Fagelson and Chas Cadwell took part in a conference on the drafting of regional constitutions in the Russian Federation. This conference provided important information on issues of federalism, balance of powers, separation of functions and other fundamental aspects of constitutional organization.

**c. Plans for next quarter**

In the next quarter David Fagelson will spend time developing proposals and seeking

non-AID sources of funding to carry out governance and rule of law research and technical assistance activities.

5. Good Government Conference

**a. Plans for reporting quarter**

IRIS would explore further the prospects for holding the conference in Senegal and Uganda.

**b. Activities during quarter**

The Senegal mission expressed its interest for a Good Government Conference, to be held in Dakar in November. IRIS contacted potential presenters and set up a team to start work on the conference as soon as USAID/Senegal produces a PIO/T.

**c. Plans for next quarter**

Development of the content of the conference, identification of potential participants, and logistical preparation.

**C. Core Administrative Functions**

1. Research dissemination.

**Final Report.** The composition of the IRIS final report will begin in June 1995.

**Requests for IRIS publications.**

Period	Number of requests	Items requested
10/1/94-12/31/94	Total: 38	Total: 228
	USAID: 6	USAID: 80
1/1/95-3/31/95	Total: 21	Total: 60
	USAID: 1	USAID: 1

To improve research uptake, a publications list will be distributed with the next newsletter mailing.

**Database maintenance for mailing lists.** Congressional lists were updated.

**WAFERS.** No WAFERS were held in this quarter.

**UPDATE.** An Update was completed and will be mailed in early May.

**"Lessons Learned" from Field Programs.** Staff began to formulate "lessons learned" as part of an overall IRIS effort to identify progress to date of the project.

**Economic and Political Institutions Book.** Revised drafts have been received for 9 of the planned 20 chapters, and production editing is complete for four chapters. A sample of chapters will be sent to prospective publishers in May.

**Research Review.** No further progress was made.

2. Scholarships/internships

**a. Activities planned for reporting quarter**

The IRIS/IET collaborative project would work to place a few selected young scholars in the US for up to one year for graduate level studies and research work at appropriate American universities.

**b. Activities during quarter**

The scholars selected for support are completing the research papers commissioned previously.

**c. Activities planned for next quarter**

Final selection of young scholars will be made, and placements arranged.

3. Other Issues:

None.

4. Financial Data

To be supplied.

5. Attachments

None.

**SECTION TWO: QUARTERLY FIELD REPORTS:**

**India, Lithuania, Mongolia,**

**Nepal, Poland, and Russia**

## Quarterly Field Report: IRIS-INDIA

### I. ADMINISTRATIVE DATA

Reporting Period: January 1, 1995 - March 31, 1995

BOA Number: ANE-0015-1019-00

Delivery order Number: 13

AID Project Office: G/EG/EIR (R. Mitchell, 522 SA-2)

AID Office funding delivery order: G/EG/SMIE

AID Office project: Institutional Reform and the Informal Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### I. Project purpose summary statement:

- A. Project Purpose: The objective of this program is to increase the understanding and awareness of the institutional aspects of economic issues in India and to generate a better knowledge base for decisions about economic policy. This will be achieved by carrying out (i) a policy analysis program, (ii) an Indo-American scholarly exchange program, (iii) conferences, and (iv) publications. The policy analysis program examines the current institutional framework in India, explores whether this framework constrains the economic liberalization process and determines whether there is a need for reform. IRIS will disseminate the results of policy analysis to the research community, to politicians and government officials, to the media and the public in India through conferences and publications.
- B. Relationship to USAID Program Strategy: The USAID program strategy in India is to help India make progress towards sustainable development by focusing on three primary program objectives: accelerating broad-based economic growth, stabilizing population growth, and protecting the environment. IRIS activities in India--as a part of the Mission's Technical Assistance and Support Project (TASP)--contribute to Mission objectives, especially to the objective of accelerating broad-based economic growth by providing economic policy analysis results and advocacy to increase the competitiveness of the Indian economy and to improve financial and regulatory environment.
- C. Progress toward Project Purpose during the Reporting Period: The purpose of this project, namely increasing the understanding and awareness of the role of institutions in economic development in India and generating a better knowledge base for decisions about economic policy, has been furthered during the reporting period. First, the first

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drafts of sponsored policy papers were reviewed. The task of revising the best of these papers into a publishable form continued. The work continued also on the book which will include some of the best papers of the program. Second, IRIS signed the contract with USAID for an extension and expansion of the current India program on March 16, 1995. This new phase of the program will be a collaborative effort between IRIS and a leading, and highly influential, Indian research institute, the National Institute of Public Finance and Policy (NIPFP). The planning of and preparation for various program activities as well as solicitation of new policy analysis proposals started immediately during the quarter.

2. Progress report

A. Technical Implementation<sup>1</sup>

Activities Planned for Reporting Quarter	Current Status	Explanations
Review Draft Policy Papers	1	
Revision of Best Policy Papers for Publication.	2	See Attachment I for status of the IRIS sponsored policy papers. Copies of revised and completed papers sent to USAID/India. IRIS is waiting for remaining scholars to submit their revised papers.
Publishing Policy Papers in IRIS/India Working Paper Series.	2	
Book	2	IRIS is editing the best policy papers and publishing them as a book.
Launching of Next Phase of Policy Analysis Program	1	
Solicitation of Policy Analysis Proposals	2	

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

<sup>1</sup> Status of activities as defined in the delivery order.

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Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Revision of Policy Papers	5/94	Scholars
Publishing Policy Papers in IRIS-India Working Paper Series.	6/94	IRIS
Book	12/95	IRIS, Scholars and the Publisher
Solicitation of Policy Analysis Proposals.	7/95	IRIS
Commissioning of Policy Papers.	9/95	IRIS, NIPFP
Advertising Policy Analysis Program.	9/96	Preparation of advertisements for Indian magazines and newspapers, and a press release on the program.
Planning of Distinguished Speaker Conference to be held in November 1995.	11/95	IRIS and NIPFP
Planning of Distinguished Speaker Conference to be held in January 1996.	1/96	IRIS and NIPFP
Planning of Indo-American Scholarly Exchange Program.	9/96	IRIS
Launching of Indo-American Scholarly Exchange Program.	6/95	IRIS
Planning of Tele-Video Conference on "Democracy and Economic Development: Friends or Enemies?"	9/95	IRIS and Worldnet TV

B. Project Administration

Activities Planned for Reporting Quarter	Current Status	Explanations
Follow-On Work on Proposal for Next Phase of IRIS/India Policy Analysis Program.	1	
Signing of Contract with USAID for Next Phase of IRIS/India Policy Analysis Program.	1	The contract was signed on March 16, 1995.
Travel of Project Director to New Delhi to prepare Work Plan for New Phase of IRIS/India Policy Analysis Program.	1	March 17-27, 1995.
Preparation of Program Brochure.	2	
Preparation of Work Plan.	2	Refinements of the Work Plan discussed in considerable detail with USAID/India.
Preparation of Expenditure Projection.	2	

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Finalization of Work Plan.	4/95	IRIS
Finalization of Expenditure Projection.	4/95	IRIS
Revision of Program Brochure.	4/95	IRIS
Sub-contracting with NIPFP.	6/95	IRIS and NIPFP
Hiring Delhi-based Organization/Individual to take care of Administrative Tasks in India.	9/95	IRIS
Preparation of Marketing Materials for Indo-American Scholarly Exchange Program.	6/95	IRIS
Forming of Proposal Review Committee.	7/95	IRIS

3. Other problems/issues and intended steps toward resolution:

Final agreement with CDE regarding their participation in the next phase of the program broke down over compensation rates. Individual scholars associated with CDE will be approached directly and alternative arrangements for logistical support in India are being made.

III. FINANCIAL DATA

To be supplied.

IV. ATTACHMENTS

Attachment I: List of IRIS sponsored policy papers and their status.

**ATTACHMENT I to the IRIS/India Quarterly Report for January-March 1995**

**List of IRIS/India Sponsored Policy Papers and Their Status**

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**IRIS-INDIA Policy Analysis Program**  
**Institutions, Incentives and Economic Reforms**

**Papers Revised and Completed:**

Dr. Dilip Mookherjee (Indian Statistical Institute, New Delhi) and Dr. Arindam Das-Gupta (National Institute of Public Finance and Policy),

\* *"Reforms in Indian Income Tax Enforcement".*

\* *"Tax Amnesties in India: A Theoretical and Empirical Analysis."*

\* *"Recent Trends in Income Tax Administration in the CIAT Countries."*

\* *"Income Tax Enforcement in Spain."*

\* *"Reforms in Income Tax Enforcement in Mexico."*

Dr. Kenneth Kletzer and Dr. Nirvikar Singh (Department of Economics, University of California, Santa Cruz),

*"Indian Fiscal Federalism: Political Economy and Issues for Reform".*

Dr. Anil Deolalikar (Department of Economics, University of Washington) and Dr. Prem Vashishtha (National Council for Applied Economic Research),

*"The Health and Medical Sector in India: Potential Reforms and Problems".*

Dr. Mrinal Datta Chaudhuri (Delhi School of Economics),

*"Labor Markets as Social Institutions in India".*

Dr. Brian Fikkert (Department of Economics, University of Maryland),

*"Reforming India's Technology Policies: The Impacts of Liberalization on Self-Reliance and Welfare."*

**Papers Completed:**

Dr. Ashok Guha (School of International Studies, Jawaharlal Nehru University),  
*"The Design of Decision Making: A Study in Economic Administration with  
Special Reference to Indian Economic Reform"*.

Dr. Anand Gupta (Indian Institute of Management, Ahmedabad),  
*"Privatization and India's Economic Reforms"*.

Dr. D.M. Nachane (Department of Economics, University of Bombay),  
*"Intellectual Property Rights in the Uruguay Round: An Indian Perspective"*.

Dr. Shashi Kolavalli (Indian Institute of Management, Ahmedabad),  
*"Options for Improving Performance of Irrigation Systems in India"*.

Dr. Ramaswamy Aiyar (Institute for Financial Management and Research, Madras)  
and Dr. Hanumantha Rao (Institute for Financial Management and Research, Madras),  
*"Indian Energy Scene--Problems and Prospects"*.

Dr. Isher Ahluwalia (Center for Policy Research),  
*"Industrial and Trade Policy Reforms in India"*.

Dr. Bibek Debroy (National Law School of India University),  
*"Consumer Protection Legislation in Public Utilities in India"*.

Dr. R.J. Mody (Sardar Patel Institute of Economic and Social Research),  
*"Reforms in Non-Bank Financial Intermediaries"*.

**Papers Under Revision:**

Dr. Govinda Rao (National Institute of Public Finance and Policy) and Dr. M.R.  
Narayana (Institute for Social and Economic Change),  
*"Fiscal Reforms and the Role of Sub-Center Governments"*.

Dr. Ashok Gulati (National Council for Applied Economic Research), Dr. Pradeep  
Sharma (Planning Commission) and Dr. Satu Kähkönen (IRIS),  
*"The Food Corporation of India: Successes and Failures in Indian Foodgrain  
Marketing"*.

Dr. Dilip Mookherjee (Indian Statistical Institute, New Delhi) and Dr. Arindam Das-  
Gupta (National Institute of Public Finance and Policy),  
*"Manpower Productivity and Organization in Tax Assessment."*

Dr. E. Sridharan (Center for Policy Research),

*"Coalition Theory and Indian Politics: Implications for Public Policy".*

Dr. Pradeep Agrawal (Indira Gandhi Institute of Development Research),

*"Regulation and Reform of the Financial Sector in India: An Analysis of the Underlying Incentives".*

Dr. Kaushik Basu (Cornell University and Delhi School of Economics),

*"Legal and Institutional Prerequisites of Market Reform in India".*

## Quarterly Field Report: Lithuania

### I. ADMINISTRATIVE DATA

Reporting Period: January 23, 1995 - March 31, 1995

BOA Number: ANE-0015-B-1019-00

Delivery order Number: 18

AID Project Office: G/EG/EIR (R. Mitchell, 522 SA-2)

AID Office funding delivery order: EUR/RME (Susan Gurley 4733 NS)

AID Office project: Institutional Reform and the Informal Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### 1. Project purpose summary statement:

- A. Project Purpose: The Purpose of the IRIS-Lithuania Project is to create a positive commercial law institutional framework for the development of the financial sector in Lithuania. This purpose is being accomplished by assisting Lithuania with its collateral law and with related areas of law.
- B. Relationship to USAID Program Strategy: Despite Lithuania's progress, there continues to exist a great need to create employment, foster trade, and to expand the private sector, especially the SME sector where most new job creation occurs.

Lithuania suffers from a significant impediment in this regard: Medium to long term credit is unavailable on a commercial basis, and short term credit is unaffordable. The World Bank, the European Bank for Reconstruction and Development, and USAID have identified the absence of a modern commercial banking system as one of the primary blocks to further development. Without such a system, private capital cannot flow into Lithuania for lending to creditworthy firms. In large part, this situation exists because Lithuania, and indeed each of the countries of C&EE, lacks an effective secured transactions system (a "collateral law") which would enable banks to lend on the basis of a debtor's assets. Presently, the only effective forms of collateral are cash collateral (i.e. funds on deposit with the lender) and inventoried apartments and commercial space. Banks are thus reluctant to lend, because they know that collection is uncertain and enforcement is difficult. If Lithuania had an effective collateral law with a central registry to prevent fraud, commercial lending to the private sector would increase dramatically.

The IRIS-Lithuania Project is in the process of assisting Lithuania by forming a locally based drafting group and by working to gain the

consensus of (and to educate) other important constituent organizations such as local bankers, lawyers, and those in the Lithuanian government who believe that the status quo is sufficient. In so doing, IRIS is leveraging upon its own experience in Poland and elsewhere, and upon its substantial contacts and interaction with the World Bank, the EBRD, and other USAID projects.

C. Progress toward Project Purpose during the Reporting Period:

1. **Formation of Secured Transactions Work Group.** The IRIS Project began in Lithuania by identifying primary counterpart contacts and by establishing a relationship with them. The Minister of Justice had earlier referred IRIS to Ms. Jadvyga Aleksaite, Chief of the Private Law Division, and IRIS had itself identified Professor Stasys Velyvis, a civil jurist who is senior in-house counsel to the Lithuanian State Savings Bank, and who has chaired several other commercial law drafting groups in recent years. Ms. Aleksaite, Prof. Velyvis and IRIS identified impediments to Lithuania's adaptation and employment of a workable, creditor-palatable, and enactable secured transactions system, and we devised the structure of the work group, the substantive goals of the group, and the means by which IRIS will assist the group.

After consideration of the political and substantive problems that the group may encounter, Ms. Aleksaite, Prof. Velyvis, and IRIS elected to form a small core group comprised of individuals who had served on groups which had shared some subject matter related to secured transactions; who had demonstrated an ability to work quickly; and whose intellects and legal work product would be respected by the legal community, the banking community, and other important constituencies. Presently, the group is comprised of the following individuals:

1. Stasys Velyvis, Chief Counsel, Lithuanian Savings Bank (Chair);
2. Jadvyga Aleksaite, Chief of Private Law Division, Ministry of Justice;
3. Daina Petrauskaite, Assistant Chief, Private Law Division, Ministry of Justice;
4. Jonas Masiokas, Professor of Law, Vilnius University;
5. Dr. Zhimontas Sveticius, Professor of Economics/Business, Vilnius University;
6. Vytas Nekroicius, Professor of Law, Vilnius University.

The group will seek to expand its membership in the event that conditions so warrant.

2. **Development of a Work Plan for the Group.** Shortly after the group's organization, IRIS assisted in drafting a skeletal workplan and in implementing it. Of the plan's seven phases, the two on which IRIS

concentrated during this quarter were the phases involving basic education for the group members (which included Velyvis' and Aleksaite's attendance at the Conference on the Draft Polish Collateral Law), and identification of conflicting statutory provisions and legislative initiatives.

### **3. Coordination with Lithuanian Government Officials and Others.**

The current Lithuanian "Hipoketos" law, although the result of a laudable effort, has proven to be unworkable in practice and is fraught with a number of substantive shortcomings. Most significantly, the law attempts to simultaneously govern secured transactions in movables and in immovables. Given that the two types of collateral require fundamentally different provisions regarding remedies and registration, among others, no country in the world maintains a single law to govern both types of collateral.

Thus, it became apparent early in the process that it would be necessary for IRIS and the work group to liaise with the proponents of this law as well as with other relevant government officials.

In March, IRIS met with the Seimas Legal Department, which had asked for an opinion as to the propriety of the "single law" notion, as well as for commentary regarding a pending "Draft Law on Mortgage Offices." The Legal Department also asked that IRIS provide an "expert" opinion regarding the "single law." Shortly thereafter, following discussions with Ministry of Justice officials, a similar request was made by the Ministry. IRIS provided an on-ground response and solicited an opinion from Professor John Spanogle, an internationally recognized expert.

The drafters of the current (utterly unusable) law were somewhat less receptive to any contention that the Hipotekos Istatymas and the system they contemplate thereby should be subjected to revision, but they did express a willingness to discuss further the matter of separation. Further, the "Law on Mortgage Offices" which they submitted to the Seimas does exclude from its coverage transactions secured by movable property. Throughout the Quarter, IRIS endeavored to maintain open communication with these people and further attempted to convince other relevant constituencies that they should be made a part of the process.

Finally, IRIS has established fairly close contact with the local World Bank mission, the World Bank country director, and the Financial and Enterprise Sector team which is negotiating with the Lithuanian government for a large loan to stimulate lending by local banks to SMEs. Last summer, the Team was able to effect the passage of a new law on commercial banks, as well as the repeal of the then-existing law. The team has identified Lithuania's lack of a creditor-palatable secured lending regime as another major impediment to the finalizing of the loan

negotiations, and it has expressed an interest in keeping abreast of IRIS's progress. IRIS envisions that the World Bank may prove helpful in the event of an intra-Lithuanian conflict regarding the propriety and/or necessity of creating a system for personal property secured transactions.

2. Progress report

A. Technical Implementation

Activities Planned for Reporting Quarter	Current Status	Explanations
Formation of Work Group	1	Members selected, biosheets enroute
Obtain "Nutarimas" from Lithuanian Government making the Group officially responsible for collateral law reform regarding movable property.	2	Ministry of Justice already is charged with reform of "Hipotek" system and has promised to act speedily. However, drafters of the current law are arguing that their law can accommodate both types of collateral.
Development of Substantive Work Plan.	1	Delivered to Group in March. Group will use it to guide its work.
Education of Group Members.	2	Ms. Aleksaite and Professor Velyvis attended Polish Collateral Law Conference (February 26-March 1); Corrigan holds "primer" sessions with group members.

Initial Interdonor Coordination	1	Corrigan holds meetings with World Bank personnel responsible for financial sector reform; with the Swedish Baltic Corps, which is providing assistance in the real estate finance area; with Swedish officials examining continued activity in these areas; with other USAID contractors; and with EU contractors to educate them with regard to the IRIS project and the status of collateral law in Lithuania.
Public Consensus Building.	1	Corrigan lectures to a Lithuanian lawyers' group on February 5, and to the AmCham Luncheon on March 30.

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Extract agreement from drafters of current law regarding separation of movables from immovables.	6/95	IRIS/Lithuania
Deliver Lithuanian language translations of Spanogle essay and certain law review articles.	4/95	IRIS/Lithuania
Expand Work Group to include drafters of current hipotekas law and members of the Lithuanian Commercial Bankers' Association.	5/95	IRIS/Lithuania
Produce inventorization of conflicting statutory and regulatory provisions and legislative initiatives.	6/95	IRIS/Lithuania

Produce at least one "consensus building" article for local publication or undertake one public speaking engagement.	6/95	IRIS/Lithuania
Obtain "nutarimas" referenced above.	6/95	IRIS/Lithuania
Produce estimated completion dates for component tasks.	6/95	IRIS/Lithuania

B. Project Administration

Activities Planned for Reporting Quarter	Current Status	Explanations
Rental of small office.	1	Gedimino 24-9, located in Vilnius' central business district, close to all ministries. IRIS rents space from the Commercial Law Center, a Lithuanian non-profit organization which houses a Western law library and provides e-mail and telephone answering services.
Hiring of local assistant/translator.	1	Darius Guze, a graduate of the English Language faculty at Vilnius University, authored a diploma thesis on bankruptcy and debtor-creditor terminology.
Organization of Local Program Finances.	1	IRIS maintains a local project bank account and observes all customary internal controls, including receipts against all withdrawals.

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Delivery of "General Periodic Report 2" to AID/Vilnius.	5/5/95	John T. Corrigan
Purchase of additional computer and printer, as well as dedicated telephone line.	5/31/95	IRIS/Lithuania
Obtain "laptop" computer to facilitate translations.	4/10/95	IRIS/Central Europe
Prepare financial report and obtain replenishment of operating account.	4/29/95	John T. Corrigan
Obtain completed "biosheets" from Lithuanian consultants.	5/1/95	IRIS/Lithuania

III. FINANCIAL DATA: To be supplied.

## Quarterly Field Report: Mongolia

### I. ADMINISTRATIVE DATA

Reporting Period: January 1 - March 31, 1995

BOA Number: ANE-0015-B-00-1019-00

Delivery order Number: 10

AID Project Office: G/EG/EIR (R. Mitchell, 522 SA-2)

AID Office funding delivery order: G/EG/SMIE

AID Office project: Institutional Reform and the Informal Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### I. Project purpose summary statement:

- A. The project endeavors to strengthen the capacity of key Mongolian decision makers from all spheres of the country's economic life to design and implement institutional reforms during the country's transition to a market economy. To accomplish this purpose a series of workshops and follow-up activities will address topical policy issues and present both general background materials and discussions of specific policy options for development and implementation.
- B. The USAID Program Strategy in Mongolia emphasizes encouragement and strengthening of the process of democratization and the promotion of economic growth. The project actively promotes these broad goals in the following ways. The workshops target a broad spectrum of Mongolians in order both to enable individuals from different sectors to better understand and articulate concerns and to enhance policy discussion and its results. The topical policy issues and corresponding points of institutional reform involve ingredients crucial to economic growth.
- C. The purpose of the project, namely "strengthening capacity of Mongolian decision-makers to design and implement institutional reforms", has been furthered during the reporting period by two activities. First, the fourth workshop in the series was held in February. This workshop, entitled "Environmental Economic Policy" and held in Ulaanbaatar, provided approximately thirty Mongolian decision-makers with exposure to a full range of tools available for effective environmental policy making and a special focus on the use of market incentives for achieving environmental goals. Two Western specialists in environmental policy assisted the IRIS staff in presenting sessions. A trip report describing the workshop in more detail is attached as Appendix 1. The participants expressed interest in continuing IRIS assistance in this area, especially in developing air quality regulations in Ulaanbaatar that make extensive use of market incentives.

Second, preparation for the fifth workshop was begun. The topic will be Economics for the Media, and the workshop will be held in Ulaanbaatar, in May, 1995. As part of preparation, Cynthia Clement, Workshop Coordinator, traveled to Mongolia to assist James Anderson, Field Coordinator, in researching the current status of economic knowledge held by reporters because Mr. Anderson was heavily occupied with the preparations for the Fourth Workshop. A trip report is attached as Appendix 2.

2. Progress report

A. Technical Implementation<sup>1</sup>

Activities Planned for Reporting Quarter	Current Status	Explanations (Problems, steps to resolve, etc.)
Presentation of fourth workshop, College Park.	1	Thirty Mongolian decision-makers with responsibilities for environmental policy-making attended a two-week workshop in Ulaanbaatar in February, 1995. Three instructors, including IRIS staff, led the workshop sessions. A full list of participants and session topics can be found in the trip report attached as Appendix 1.
Background research on existing institutions relevant to the fourth workshop in Mongolia, including State agencies, non-governmental organizations, and other donor projects, Ulaanbaatar.	1	Research includes interviews with government officials, representatives of non-governmental organizations, political parties, regulatory agencies, academics, members of parliament, and the foreign assistance community.
Translation and compilation of laws and documents relevant to the fourth workshop, Ulaanbaatar.	1	Copies of these documents can be accessed by contacting James Anderson in Ulaanbaatar or Georges Korsun in College Park.
Design of fourth workshop, College Park.	1	Tasks included selection of lecturers, curriculum design, and lecture preparations.

<sup>1</sup>Status of activities as defined in the delivery order.

<p>Logistical preparations for fourth workshop. College Park and Ulaanbaatar.</p>	<p>1</p>	<p>Tasks included arranging an agreement with a host counterpart in Mongolia, the Ministry of Nature and Environment, who provided classroom facilities and travel arrangements for Mongolian participants from localities outside Ulaanbaatar. In College Park, tasks included obtaining country clearance and travel approval from the IRIS project officer and making travel arrangements.</p>
<p>Roundtable discussion with key Members of Parliament involved with the General Environmental Law.</p>	<p>1</p>	<p>At the request of Member of Parliament Turtogtokh, the faculty for the fourth workshop consulted with MPs Ochirkhuu, Urnasan, Norovsambuu, and Gan-Ulzii on the content of Mongolia's draft General Environmental Law.</p>
<p>Solicit suggestions of Advisory Council members on participants for fifth workshop.</p>	<p>2</p>	<p>Advisory Council suggestions will be solicited and forwarded to the USAID Representative in April of 1995, along with evaluations developed by IRIS staff.</p>
<p>Workshop development trip to Mongolia by IRIS-College Park staff responsible for fifth workshop.</p>	<p>1</p>	<p>This trip is more fully described in Appendix 2.</p>
<p>Development of follow-up technical assistance as requested by workshop participants and approved by the USAID Representative in Mongolia, Ulaanbaatar.</p>	<p>2</p>	<p>Work on developing procedures for enforcement of the Law on Prohibiting Unfair Competition awaits availability of William Kovacic, a consultant who consulted on drafting of the law. Work on providing assistance to drafters of a new insurance law was delayed by a change in personnel in the Ministry of Finance; work will resume in the next quarter.</p>

Participation in an information exchange between foreign advisors arranged by UNDP.	1	James Anderson participated in this quarterly discussion designed to facilitate greater coordination and information exchanges between foreign aid projects.
Publication of an interview in "Government News", a newspaper of the Mongolian Government.	1	James Anderson granted an interview which was published in an important newspaper. The article is attached as Appendix 3.
Talk at the English for Special Purposes Institute on the "Institutions of a Market Economy."	1	James Anderson was invited to give this talk at the inaugural meeting of the "Business Club," created by the ESPI to meet monthly and discuss issues of interest to the students and faculty of ESPI.

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Conduct fifth workshop on economics for the media.	6/3/95	IRIS-Mongolia
Solicit Advisory Council members for suggestion about participants for fifth workshop.	4/30/95	Advisory Council; IRIS-Mongolia
Identification of counterpart agency in Mongolia to host fifth workshop and provide logistical assistance.	4/30/95	IRIS-Mongolia
Begin preparations and background research for sixth workshop on corporate governance.	6/30/95	IRIS-Mongolia

Research/Workshop development trip to Mongolia by IRIS-College Park staff responsible for sixth workshop.	6/30/95	IRIS-College Park
Conduct follow-up technical assistance on implementation of the Law on Prohibiting Unfair Competition.	9/30/95	IRIS-Mongolia (develop agenda for assistance); IRIS-College Park (identify and hire appropriate experts in the area of antitrust enforcement)
Conduct follow-up technical assistance on developing a general insurance law and regulatory framework.	9/30/95	IRIS-Mongolia (develop agenda for assistance); IRIS-College Park (identify and hire appropriate experts in the area of insurance regulation)
Forward participant requests for new follow-up technical assistance arising from the fourth workshop to the USAID Representative in Mongolia.	6/30/95	Workshop 4 Participants: IRIS-Mongolia

### B. Project Administration

Activities Planned for Reporting Quarter	Current Status	Explanations (Problems, steps to resolve, etc.)
Travel to Beijing for the acquisition of supplies.	3	Trip postponed until next quarter.
Initiate new PIOT to release incremental funding for the remainder of project and extend the completion date to May 1996.	2	Request to USAID Representative made in August 1994. Action commenced in October. Still waiting for final response. Project Funds from initial tranche were exhausted at the end of February. Reduced activity continues with Core support, as appropriate under the core scope of work.

#### Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Travel to Beijing for the acquisition of supplies.	6/30/95	IRIS-Mongolia
Submit proposal for additional technical assistance after completion of they buy-in, at the request of the USAID Mission Representative.	6/30/95	IRIS-College Park and Mongolia Staff.

3. Other problems/issues and intended steps toward resolution. As forecast in the previous quarterly report, the project exhausted current obligated funds at the end of February. Since the incremental funds requested in August 1994 have not been obligated at this time, the project is continuing at reduced levels with IRIS core funds in accordance with the Core scope of work. We understand that pending a congressional notification, funds will be made available in April, 1995, and that a no-cost extension of time will be granted along with those funds.

### III. FINANCIAL DATA

To be supplied.

**TRIP REPORT  
FEBRUARY 8 - 27, 1995**

On February 8, 1995 an IRIS team led by Mr. Georges Korsun, Project Director, traveled to Mongolia to conduct a two-week workshop on "Economics and Environmental Policy". The team included Professor John Horowitz, Department of Agricultural and Resource Economics, University of Maryland, and Professor Robert Percival, Director, Environmental Law Program, University of Maryland Law School.

Environmental issues are becoming important in Mongolia as the country continues its move to a market economy. Mongolia suffers from the typical Soviet legacy of persistent inattention to environmental problems and policy makers are also confronting new environmental pressures resulting from privatization of the agricultural sector, from the debate over the ownership and disposal of natural resources, and from the changing structure of industry. Moreover, the constitutional stance on public ownership of pasture land has created perhaps the world's largest commons, raising the possibility that traditional Mongolian commons management tools may not be sufficient, given the new pressures.

To assist policy makers and implementers, this IRIS-Mongolia workshop exposed participants to the full range of tools available for sound environmental policy making, with a focus on the use of market incentives for achieving environmental goals. The workshop began with a week of sessions on the institutional foundations and concluded with a week of sessions on environmental and natural resource economics. Air quality issues linked thematically the different applied exercises used throughout the two weeks to illustrate different aspects of policy making and implementation.

In the first week, particular attention was paid to the variety of institutions available to manage environmental risks, including the substantial role that NGOs and local government officials may play. Among topics covered were: coping with uncertainty, regulatory design and criteria for evaluating regulatory alternatives, and the use of standards (risk-benefit balancing, technology-based, or health-based). Several sessions were devoted to the implementation and enforcement of environmental laws, touching on issues of monitoring and detection, the use of civil and criminal penalties, and the role of citizen suits. A session on comparative environmental law addressed differences in the approaches taken by various countries and the implications of international trade liberalization on environmental interests. Finally, an illustration of the range of available institutional responses was provided in a case study on the development of air pollution controls.

After some introductory material on market failures relevant to environmental economics (e.g. public goods, externalities, common resources use), the second week proceeded with the economic rationale for environmental regulations, including market-based schemes such as taxes and transferable permits. Next, the components of cost/benefit analysis were presented, with emphasis placed on methodologies for the valuation of benefits (e.g. revealed preferences and contingent valuation surveys) and the concept of discounting. An exercise in applied cost/benefit analysis using Mongolia-specific data was conducted to

evaluate various policy options related to the introduction of new, more efficient ger stoves. This application was selected because ger stoves are said to contribute about 60% of the air pollution in Ulaanbaatar; while the government has been considering subsidy schemes to encourage production of these stoves, no rigorous analysis of their environmental benefits has ever been conducted. The week concluded with several sessions devoted to the economics of renewable and nonrenewable natural resources, with emphasis on forestry, hunting, and coal mining. Basic rules for optimal extraction rates and resource pricing were presented, with and without the presence of associated environmental problems. A detailed list of sessions and participants is included as Appendix A.

The concluding session was devoted to a discussion of potential follow-up activities and to an evaluation of the workshop. The participants identified five potential follow-up topics for further debate: 1) a comparative study of Mongolian and US Environmental Laws, 2) additional work on incorporating economic incentives in environmental regulations, 3) assistance in the establishment of laboratory facilities, 4) environmental education for the population-at-large, and 5) air pollution control issues in Ulaanbaatar. After additional debate, a combination of proposals 2 and 5 was deemed most important: a new consideration of air quality regulation in Ulaanbaatar that would make extensive use of market incentives. The participants next identified likely groups or agencies that should participate in such a follow-up; these included the Ministries of Nature and Environment, Health, Energy, and Infrastructure; the Ulaanbaatar City Administration, the Technical University, the Central Environmental Lab, and the Office of Standards and Measurements. NGO's identified by the participants as most appropriate for participation included the Mongolian Association for the Conservation of Nature and the Environment (MACNE) and the Mongolian Greens Movement. Mr. Anderson will begin coordination of this follow-up activity in early April.

A modified IRIS post-workshop evaluation questionnaire was distributed to all participants: this questionnaire was amended to include one multiple response question from AID Handbook 10 (the only appropriate question for this type of workshop). The participants' responses suggest that, while there is, as always, room for improvement, the program was well-conceived and served the needs of the participants fairly well. To summarize the comments, participants thought more material should be provided, especially before the beginning of the workshop (this is a recurring difficulty caused by the time and expense involved in getting technical translations into Mongolian), include more Mongolia-specific and Mongolia comparative material, provide more time for formal presentations and more informal discussions by participants, and make the workshops somewhat briefer. For our part, we learned that it was important to rotate the instructors so that no individual taught several sessions in a row in order to maximize their teaching effectiveness. More generally, we realized that Mongolia-based workshops, because they involve so many more participants (and hence more diversity in background and economic knowledge) need to be more focused, less comprehensive, and targeted at a narrower audience. The IRIS team was very pleased with the attendance at the seminar over the course of the two weeks, especially in light of the fact that most participants faced regular pressure to attend to their jobs and

related duties.<sup>1</sup> Twenty three of the participants attended at least 3/4 of the sessions. A compendium of the participants' responses to the open-ended evaluation questions and the scores from the objective questions are included as Appendix B.

The workshop officially concluded with a reception for participants and Advisory Committee members at the Ulaanbaatar Hotel. United States Ambassador to Mongolia Donald Johnson distributed USAID Certificates of Achievement to all participants.

While in Mongolia for this workshop, the team, along with Mr. Anderson participated in a special afternoon discussion session with members of Parliament responsible for drafting the General Environmental Law (GEL) and the package of environmental laws (e.g. air, water, forestry) to be enacted in the next few months. The team made several recommendations about the GEL and answered questions from the parliamentarians on their particular concerns. In attendance were Members of Parliament Turtogtokh, Ochirkhuu, Urtnasan, Norovsambuu, Gan-Ulzii, and Advisors to Parliament Banzragch and Tumenbayar.

During the two weeks of the workshop, several meetings were held to gather background information and prepare lecture material. These included meetings with Mr. Batjargal (Minister, Ministry of Nature and the Environment), Mr. Dashpuntsag (Head of the Power Engineering Department at the Mongolian Technical University), Mr. Ykhanbai (Head of the project Economic Incentives for the Environment at the Ministry of Nature and Environment), Mr. Tserendeleg (Executive Officer of the Mongolian Association for the Conservation of Nature and the Environment), Ms. Dolgormaa (Officer in the State Inspection Department at the Ministry of Nature and the Environment), and Messrs. Tserendorj and Altangerel (General Director and Deputy Director of the Mongolian Coal Company "Nuurs", respectively).

In addition, Mr. Korsun began background research for the final workshop on Governance by interviewing Mr. Meinhard Gans, head of an ADB Technical Assistance project to the Enterprise Restructuring Center, Mr. Damdin, former Central Party Secretary for Industry, and Ms. Feige (ADB), Mr. Hahm (World Bank), and Mr. Bailikhuu (Government Privatization Commission). Finally, Mr. Korsun also met with Chuck Howell, USAID Mission Representative to discuss upcoming AID Technical Assistance to Mongolia and IRIS' possible role.

As always, the conduct of the workshop was greatly facilitated by the superb effort of the IRIS Ulaanbaatar Field office in gathering preparatory material, assisting in the selection of participants, and organizing the logistics for the workshop. We thank Mr. Anderson, Field Coordinator, and Ms. Sodontogos and Uyaanga, Administrative Assistants and Interpreters for their tireless contributions. We greatly appreciated the contribution of Mrs. Yanjemaa, who maintained her impeccably high standards for interpretation. Thanks

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<sup>1</sup> For example, the Government was discussing the General Environmental Law as our workshop was taking place; several of the participants, who were responsible for the draft law, were called to testify.

are due also to our local counterpart for this seminar, the Ministry of Nature and Environment, for their cooperation in providing facilities and funding the travel expenses of participants from outside Ulaanbaatar.

## ATTACHMENT II

During January, 1995, Cynthia Clement, Workshop Coordinator, travelled to Ulaanbaatar, Mongolia, to prepare for a workshop to be held later this year on the subject of "Economics for the Media". Alfreda Brewer, Interim Mission Representative had chosen this topic in December of 1994. The workshop is expected to be presented in Ulaanbaatar in May.

In order to obtain background information about the target audience and to identify the economic issues of most interest to reporters, Ms. Clement interviewed editors of several newspapers, directors of radio and television stations, free-lance journalists, and foreign journalists who have worked in Mongolia. Questions addressed how many people covered economic events, what educational background they possessed, what specific economic topics were considered to be most interesting to their readers, what specific economic topics were least understood by reporters, who chose what topics reporters covered, and information about how many people subscribed or had access to broadcasts.

General conclusions stemming from these interviews support the need for a workshop which provides reporters with principle economic concepts. Many newspapers ask economists to contribute articles on specific economic topics because journalists do not have enough background to write such analysis; however, editors complained that articles written by economists tended to be too technical and too abstract for their readership. Specific economics issues that interviewees identified as problematic for their reporters to cover include: monetary policy, fiscal policy, inflation, unemployment, securities market, general business behavior, industry performance measures, and the role of international donors in setting a country's policies. When asked about the nature of training, Mongolian interviewees reinforced the IRIS\_Mongolia Project's conviction that a combination of theory and practical examples will be the most effective format for the curriculum. To this end, the team presenting the workshop is expected to include a working reporter as well as economists.

Another result of the interviews was that categories of potential participants were identified. Potential counterparts for hosting the workshop were also investigated; a good prospect was located in the Mongolian Press Institute, which was set up by DANIDA for the purpose of providing training to journalists. Larger newspapers and the radio and television stations have departments that concentrate on topics with economic relevance; smaller newspapers have too few reporters to allow exclusive specialization but would like to build greater expertise within their staff. Most journalists were trained in the former Soviet Union, and the curriculum included a one-semester course on capitalist economics. Reporters supposedly have wide discretion over what topics are covered and what opinions are presented, although some dissent from this claim was noted. The largest newspapers are circulated throughout the country but not in a timely fashion. Radio broadcasts are more widely received than television, which is concentrated in the cities.

The full schedule of interviews with key people was made possible by the efforts of the IRIS-Mongolia Project Ulaanbaatar Office, including James Anderson, Field Representative, Sodontogos and Uyaanga, Administrative Assistants and Interpreters.

Attached is a list of individuals interviewed by Ms. Clement during her trip.

## INTERVIEWEES, JANUARY, 1995

- D. Sarantuya, Director and Executive Editor, TV News Department, Mongolian Radio and Television, Government of Mongolia
- U. Sarantuya, Deputy Chairperson, General Director of Radio Mongolia, Mongolian Radio and Television, Government of Mongolia
- H. Tsevee, Director General, News of Government newspaper
- Purevsuren, Reporter, News of Government newspaper
- Ts. Baldorj, Editor-in-Chief, Ardyn Erkh newspaper
- E. Sonintogos, Department Head, Industry and Business Information Department, Ardyn Erkh newspaper
- Akim, Editor-in-Chief, Il Tovchoo newspaper
- Lutbayar, Reporter, Mongolian Youth Newspaper
- Dasdzeveg, Editor, Erkh Choloo (Freedom), Mongolian National Democratic Party newspaper
- S. Jambaldorj, Editor-in-chief, Khudulmur newspaper
- Davaadorj, Prime Minister's Press Secretary, Government of Mongolia
- Ts. Dashdondov, President, Mongolian Free Democratic Journalists' Association
- Lutta, Free-Lance Reporter, and Director, Reflection (a private media training and research center)
- Hurelbaatar, Editor-in-Chief, Ulaanbaatar newspaper
- Munkhjargal, Free-Lance Reporter
- Nomin, Reporter, Mongol Messenger
- Ts. Enkhbat, Managing Director, The Press Institute of Mongolia
- L. Tudev, Editor-in-Chief, Unen, Mongolian People's Revolutionary Party newspaper
- Batsuur, entrepreneur attempting to start independent television programming venture
- D. Tsedevsuren, General Director, Ulaanbaatar TV Company

Iljira Halasz. Reuters Correspondent in Mongolia

Peter Hannam. China Correspondent. The Journal of Commerce

Susan Lawrence. Beijing Bureau Chief. U.S. News and World Report

Sheldon Severinghaus. Field Representative in Mongolia. The Asia Foundation

ATTACHMENT III

January 11, 1995

To: Mr. James Anderson  
IRIS-Mongolia project field coordinator

From: Journalist P. Purevsuren  
reporter of the newspaper "Government News"

We'd like to kindly request you to provide answers to the following questions. We need this information by January 20th so that we could have the news published by the beginning of February. Thank you.

1. What is IRIS? What are the major activities of IRIS?
2. Does this organization have many projects in other countries?
3. When did IRIS start its activities in Mongolia? What activities did it organize in Mongolia?
4. When is the next workshop and what topic will it cover?
5. What is your opinion about the impact of the Mongolian economy on its nature and environment? How does it affect the nature?
6. How many people do you have on staff of the office in Mongolia? Do people arrive to UB office to organize workshops?
7. The last question: Please, introduce yourself to the readers of the ZGM

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January 20, 1995

P. Purevsuren  
"Government News"

Dear Mr. Purevsuren:

I am happy to provide answers to the questions of your January 11 letter:

1. The IRIS project was originally established in 1990 through a cooperative agreement between the United States Agency for International Development and the University of Maryland. IRIS is based on the premise that the quality of a country's institutions (laws, regulations, customs, behavioral norms) are important determinants of the country's economic growth, stability, and the welfare of its people. The goal of the IRIS project, therefore, is to support institutional reforms that enhance competitive markets and democratic processes.

2. In addition to Mongolia, IRIS has projects in several other countries. Our project in Poland works toward institutional reform affecting small businesses, with focused attention on commercial law reform, primarily reform of the collateral and bankruptcy laws. We have several projects in Russia, including training on collateral law and the Russian Civil Code. In the Ukraine we have advisors assisting in the implementation of the unfair competition law, in addition to assisting with trade regulation and transportation issues. In Nepal our activities are aimed at helping the Government of Nepal formulate and implement market-oriented policies supporting the private sector, including work on the company and consumer protection laws, and banking reform. Our project in Chad encourages private sector development through reform of institutions such as the business and banking laws. Our project in Armenia supports the Armenian Center for Economic Policy Research and Analysis. In India, we support collaborative research by Indian and American scholars into the current institutional framework and economic liberalization.

3. IRIS has been active in Mongolia since 1991. The goal of the Mongolia project is to strengthen the capacity of Mongolian decision-makers to carry out the institutional reforms necessary for a well-functioning market economy. We do this primarily through a series of education workshops on specific aspects of economic policy. We have presented eight of these workshops on topics such as the role of prices in a market economy, small business policy, establishing clear property rights, international trade, the government budget, the economic relationship between central and local government administrations, business law, and insurance. We also provide assistance on specific policy reform activities requested by our workshop participants. For example, we assisted the law drafting group that drafted the law on prohibiting unfair competition.

4. Our next workshop will run from February 13 through February 24 and it will be on the topic of environmental policy. After that, we will hold two additional workshops on economics for the members of the media, and the institutions affecting corporate governance. During the workshop on environmental policy, we will explore the institutions for environmental policy, and specifically how to evaluate different policy options. We will examine comparative environmental laws, and present some of the economics of resource management and the use of cost-benefit analysis in environmental protection. We think it is very important to illustrate all of the steps involved in applying these concepts to an environmental problem, so we will use the example of air pollution. We will also explain how the tools can be applied to other issues like protection of water and soil quality, etc.

5. Many aspects of nature and the environment have the characteristics of shared resources. This means that the actions of one party (for example a business) could have harmful effects on other parties, and completely unregulated decision making could lead to environmental problems and inefficiency. This means there is a role for state involvement in matters relating to nature and the environment. As Mongolia moves toward market economic relations, there is a pressing need to design the policies that will protect the environment without hindering Mongolia's economic growth.

6. The staff in Ulaanbaatar consists of myself and two Mongolian assistants. When we teach workshops in Mongolia we have 3 or 4 experts come in from America in order to lead

the workshop sessions with the Mongolian participants. For example, we had 2 law professors and 2 economists come to lead the workshop on development and implementation of business law.

7. I was born in the industrial city of Baltimore, Maryland but grew up in the neighboring town of Columbia. I studied economics and finance at the University of Maryland, Baltimore County where I received my Bachelor's degree. I worked briefly as a financial analyst at the Unisys Corporation before returning to graduate school at the University of Maryland in College Park, where I studied industrial organization and economic development. I first came to Mongolia in February 1993, and came back in July 1993 to serve as the field coordinator. I enjoy my job because I always get to learn new things and meet new people. I spend most of my free time visiting with friends or reading. When it is a little warmer, I like to go hiking in Mongolia's beautiful countryside, but I don't do much hiking in the winter.

## Quarterly Field Report: NEPAL

### I. ADMINISTRATIVE DATA

Reporting Period: January 1, 1995 - March 31, 1995

BOA Number: ANE-0015B-00-1019-00

Delivery Order Number: 09

AID Project Office: G/EG/EIR

AID Office funding delivery order:

AID Office project: Institutional Reform and the Informal Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### I. Project purpose summary statement:

- A. Project Purpose: To help the Government of Nepal formulate and implement policies that support a pro-market, private sector led economy by providing financial and technical assistance, identifying policy changes to be implemented, and advocating the need for crucial institutional reforms in the judicial and regulatory areas.
- B. Relationship to USAID Program Strategy: The USAID program strategy in Nepal is to help the economy enter a new era of economic prosperity by promoting market reform and addressing the health, education, and other needs of the rural poor. IRIS activities in Nepal contribute to Mission objectives by assisting with expertise on policy reform initiatives conducive to the growth of the private sector. IRIS's assistance on institutional and regulatory reform is especially helpful for small and micro-enterprises which are crucial to the success of any poverty-alleviation scheme
- C. Progress toward Project Purpose: IRIS-Nepal Project continues to provide Government with expertise on policy and legal reform initiatives that further economic liberalization. Reform initiatives that IRIS was associated with in the last quarter included assistance on company law, consumer protection legislation, build-operate-transfer (BOT) possibilities, commission law, Grameen financial institutions, and capital market development.

However, it was only toward the end of the last quarter that IRIS-Nepal activities got into full swing. It took considerable time to brief Dr. Dilli Khanal, the new Convener of the Policy Dialogue Committee (PDC), on past IRIS/ELP activities. Finally, on March 20, 1995, the first PDC meeting under the new government was held. At the meeting, most of the decisions favored continued involvement with past activities. Only programs related to the Credit Rating Service and assistance to privatization through Price Waterhouse/INTRADOS were shelved. New activities that the current Government would like to initiate are study of the possibility of a Commission Law, review and assessment of the current Industrial Enterprise Act, helping Grameen Banks attain sustainability, and developing a comprehensive

program for capital market development. The minutes of the meeting are attached as Annex I.

The last Quarter saw additional work bestowed on the IRIS-Nepal project by USAID/Kathmandu. On February 7, 1995, USAID's contract with Abraham David to run the Economic Liberalization Project Secretariat (ELPS) ended. The primary task of the contractor was to provide logistic support to the Policy Dialogue Committee (PDC) and the Business Development Committee (BDC), the two steering committees that oversee the Economic Liberalization Project. Logistic support included staff assistance, information sharing, drafting terms of reference, overseeing implementation, and other associated activities.

To ensure continuity in program execution, USAID/Kathmandu requested the IRIS-Nepal office to temporarily take up activities previously assigned to ELPS. To facilitate this expanded work, the IRIS-Nepal project, starting from February 8, 1995, expanded both its staff and office space. The staff has now increased to ten, with Anita Tuladhar as Director for Policy Dialogue Activity, Samjhana Thapa as Director for Business Development Activity, and Narendra Basnyat as Advisor. The IRIS-Nepal project also gave up its old space and moved into the bigger ELPS office complex.

As part of this new arrangement, the IRIS-Nepal project has had to take on business development activities as well. In this context, the project staff spent considerable time helping prepare a Terms of Reference for supporting the Janakpur Women's Development Center that was to be signed in the presence of First Lady Hillary Clinton. A last minute change in the First Lady's scheduling necessitated the cancellation of the signing ceremony. Support to the project, however, is to continue. Support to other business activities, including business literacy, business consultancy, and management training, are also being followed through by the IRIS-Nepal office during this time of transition. Annex II gives details on the business development activities that have been or are being channeled through the project.

This arrangement with USAID is temporary. Negotiations are currently underway between USAID and IRIS to conclude a new 20 month contract—to be known as IRIS/Nepal V—which includes support for policy dialogue, business development, and PDC/BDC committee support activities. The PIO/T for new contract is awaiting signature by the USAID/Nepal Director.

IRIS representative Praveen Dixit continues to spend afternoons at the Ministry of Finance helping co-ordinate ELP activities and assisting the Government with policy work as requested. However, he has reduced his hours at the Ministry considerably so as to devote more time to the running of the expanded IRIS-Nepal office. The Government has recently designated him as permanent invitee to the Tariff Commission which is to provide recommendations for the forthcoming budget. During this quarter, the IRIS representative delivered a paper titled "Economic Reform in Nepal: A cursory Assessment" at the Center for Economic Development

and Administration, Tribhuvan University. A copy of the paper is attached with this report.

2. Progress Report

A. Technical Implementation

Activities Planned for Reporting Quarter	Current Status	Explanations
Tabling of Company Law	2	The new Government has decided to push ahead with this legislation in the next session of Parliament, which begins in June.
Tabling of Consumer Protection Act	2	This is a top priority for the new Government for the June session.
Assistance in establishing a Central Depository System at the Nepal Stock Exchange	2	PDC is to review this commitment after the Annual General Meeting of the Stock Exchange which is expected to implement IRIS recommendations.
Banking Reform— Commercial	3	The PDC deferred assistance decision on the two state-owned commercial banks.
Banking Reform — Grameen	2	Assistance being considered for two Government owned and two NGO owned rural banks.
Policy Analysis Wing (PAW) assessment studies	4	Final reports presented. Unlikely to extend this provision in the near future.
Credit Rating Agency	4	The new Government is not interested in pursuing the establishment of this agency.
Liaison with Government officials	2	IRIS representative helping communications between USAID and Government agencies as and when needed. However, he has had to cut down on time spent at the Ministry of Finance because of expansion in IRIS-Nepal activities since February 7, 1995.

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<b>Activities Planned for Reporting Quarter</b>	<b>Current Status</b>	<b>Explanations</b>
Completion of Contract Law	2	PDC to identify client Ministry. Final draft of legislation to be completed in the next quarter.
Janakpur Women's Development Project TOR preparation	2	Business development activity initiated by IRIS after expanding office and staff. Not a scheduled activity for this quarter.
Business Consultancy Program TOR preparation for micro-enterprises	2	TOR being readied in preparation for Nepal V signing. Not a scheduled activity for this quarter.
Nepal V Contract Negotiations	2	A new contract, Nepal V, is being negotiated with USAID/ Kathmandu which expands IRIS's role to include business development activity for micro enterprises and ELP steering committees support.

Current Status Key:

- (1) Action completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

<b>Planned Activities for Next Quarter</b>	<b>Estimated Completion Date</b>	<b>Entity Responsible for Action</b>
Tabling of Company Law	July 1995	Ministry of Industry
Tabling of Consumer Protection Act	July 1995	Ministry of Supplies
Completion of Contract Law	June 1995	Nepal Law Society
Assistance on Central Depository Service at Nepal Stock Exchange	on-going	Stock Exchange / Securities Exchange Board / Andrew Haber (IRIS consultant)
Ranking Reform—Grameen	on-going	Nepal Rastra Bank
Review Foreign Investment Provisions in Industrial Enterprise Act	July 1995	National Planning Commission

Review problems on policies and procedure for exports of small businesses	July 1995	Ministry of Commerce
Review need for Commission Law	June 1995	MOF/IRIS
Pursue Build-Operate-Transfer (BOT) legislation	not definite	National Planning Commission/IRIS
TOR preparation and contract finalization for assistance to Janakpur Women's Development Project	May 1995	IRIS/Nepal
Project Newsletter	May 1995	IRIS/Nepal

B. Project Administration

Activities Planned for Reporting Quarter	Current Status	Explanation
ELP Secretariat Support	2	USAID requested IRIS to take over Secretariat support. IRIS-Nepal office expanded to 10 staff from February 8, 1995. Interim measure until Nepal V is finalized.
E-mail Address change	1	New address: IRIS@IRISPC.MOS.COM.NP

Activities Planned for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Negotiations on Nepal V	May 1995	USAID/IRIS
Install new phone line and system	June 1995	IRIS/Nepal
Install E-mail for new staff	June 1995	IRIS/Nepal
Make provisions to acquire two additional Personal Computers	May 1995	IRIS/Nepal

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

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3. Outstanding problems and issues and intended steps toward resolution:

Currently no outstanding problems.

III. FINANCIAL DATA: To be supplied.

IV. ATTACHMENTS:

1	16th PDC meeting minutes
2	List of ELP business-related programs
3	"Economic Reform in Nepal: A cursory Assessment"

## 16th PDC Meeting Minutes

Annex 1

Date : Monday, March 20, 1995  
Time : 3:00 p.m.  
Venue : Economic Liberalization Project/IRIS Centre  
Koteswor, Teenkune, Kathmandu

### Present:

Hon. Khanal, D.R.	Chairman	Member, National Planning Commission
Mr. Tiwari, N.R.	Member	Secretary, National Planning Commission
Dr. Thapa, Govind	Member	Advisor, Ministry of Finance
Dr. Rajkarnikar, P.R.	Member	Deputy Governor, Nepal Rastra Bank
Mr. Devkota, B.K.	Member	Jt. Secretary, Ministry of Law
Mr. Chaudhary, B.K.	Member	Chairman, BDC
Dr. Cohen, N.P.	Member	Project Officer, USAID/N
Ms. Banskota, S		USAID
Dr. Dixit, P.M.		Director - IRIS
Mr. Basnyat, N.K.		Advisor, IRIS
Ms. Thapa, S.		BDC Coordinator
Ms. Tuladhar, A.K.	Member-Secretary	PDC-Coodinator

### Absent :

Mr. Koirala, B.P.	Member	Joint Secretary, Ministry of Industry
Mr. Devkota, L.	Member	Joint Secretary, Ministry of Commerce
Representative	Member	Department of Economics, T.U.

### Agenda

1. Ratification of New Membership
2. Status of Existing Proposals
3. New Proposals
3. Miscellaneous

The new members were welcomed by the Project Officer, Dr. Neal Cohen who also briefed the committee members about the project and its various activities. The Chairman welcomed all members present and since the quorum was established, started the meeting at 3:15 p.m. In line with the circulated agenda, the following discussions and decisions were made.

### 1. Ratification of New Membership

A list of new members representing the different government institutions was tabled. Accordingly, the list of new PDC membership was ratified as follows:

Hon. Khanal, D.R.	Chairman	Member, National Planning Commission
Mr. Tiwari, N.R.	Member	Secretary, National Planning Commission
Dr. Thapa, Govind	Member	Advisor, Ministry of Finance

Dr. Rajkarnikar, P.R.	Member
Mr. Devkota, B.K.	Member
Mr. Koirala, B.P.	Member
Mr. Devkota, L.	Member
Representative	Member
Mr. Chaudhary, B.K.	Member
Dr. Cohen, N.P.	Member

Deputy Governor, Nepal Rastra Bank  
 Joint Secretary, Ministry of Law  
 Joint Secretary, Ministry of Industry  
 Joint Secretary, Ministry of Commerce  
 Dept. of Economics, T.U.  
 Chairman, BDC  
 Project Officer, USAID/N

**2. Status of Ongoing Projects**

The members were briefed about ongoing projects and needed government action on each of the projects. Discussion and needed follow-up action was decided on the following projects:

i. Legal Reform

- a) Company Law: PDC was briefed about the completion of the drafting of company law and the need for tabling it in the upcoming parliament session. The issue of whether to table the legislation as an amendment or a new Act was raised. It was then decided that the Chairman shall discuss these issues with the Dr. Bhola Chalise, Secretary of Ministry of Industry.
- b) Contract Law: The committee was informed that the drafting of the Contract Law is in process. Since this legislation does not have a client ministry as yet, it was decided that the Chairman shall discuss with the Secretary of Ministry of Industry on this issue.
- c) Consumer Protection Act: The committee was informed that a meeting was being held at Dr. Khanal's office with the Secretaries of Ministry of Law and Ministry of Supplies to discuss the draft of the Act.
- d) Commission Law: The Chairman expressed his interest in drafting of a commission law. Since the IRIS office could not locate a comparable act among other countries, it was decided that first a study shall be undertaken to better understand the concept of a commission law, to examine the problems faced in this regard and to look into the legal framework for addressing these issues. Mr. Shambhu Khanal of Ministry of Finance has been designated as the contact person in developing the Terms of Reference for the study.
- e) Foreign Exchange Regulations Act: Mr. Chaudhary reiterated the need for the government to review the Foreign Exchange Regulations Act. Mr. Chaudhary was of the opinion that current act was not in line with the liberal economic policy being adopted by the Government and is impeding foreign trade. Dr. Rajkarnikar informed the committee that an amendment is in process and also requested FNCCI to prepare a statement noting problems and any other issues being faced by the private sector with regard to this.

iv) Privatization/BOT Modalities for Infrastructure Projects

- a) Privatization: The committee was apprised of the project's assistance to the Privatization cell at the Ministry of Finance by way of technical assistance and training support. It was then decided that since there will not be privatization moves on any major companies soon and since the Nepali staff are capable of undertaking the privatization process by themselves, there will not be an immediate need for a Long Term Advisor (LTA). LTA services is one major component of ELP

support to the privatization cell. Hence, it was agreed that ELP support through Intradocs to the privatization cell shall be terminated. However, it and when needed, any support needed for a specific privatization effort shall be brought in through IRIS.

b) BOT Modalities for Infrastructure Projects: The committee decided to revive the committee on BOT Modalities under the Chairmanship of the Secretary of the National Planning Commission which had been formed in the last PDC meeting. The committee shall look into the legal and economic issues for introduction of BOT type of infrastructure projects.

### **3. New Proposals:**

#### **i) Training Support for Grameen Financing Projects**

The committee was briefed about the proposals for training from the Eastern Rural Development Bank, Far Western Rural Development Bank, Centre for Sustainable Development and Nirdhan. USAID indicated that this is an area of high priority for the mission given the current focus on women and micro-enterprise development. It was then decided that while the committee approves the idea of supporting Grameen projects in principle, a detailed training assistance program, both for the NGOs as well as the banks, shall be discussed with Dr. Khanal and Dr. Rajkarnikar.

#### **ii) Capital Markets**

Proposals from Brokers Association, Securities Exchange Board, DPS Publications, and Nepal Stock Exchange on information dissemination and investor education were discussed briefly. It was subsequently decided that a subcommittee comprising of Dr. Pushpa Rajkarnikar, Dr. Govind Thapa, Shubha Banskota and Anita Tuladhar will review the Terms of Reference and finalize the proposals. It was also decided that after the Annual General Meeting of the Stock Exchange is held and needed amendments are made to the bye-laws of the Exchange, Ravi Peiris will be invited to follow-up on the recommendations made earlier and to initiate preparatory work for the Central Depository System.

### **4. Miscellaneous**

**i) Privatization Seminar:** The committee was informed about the proposal from Awareness Nepal to conduct a seminar on privatization. It was then decided that a Terms of Reference will be developed and proposals shall be sought on a competitive basis to hold this seminar.

**ii) Problems on Export Procedures:** Given the problems being faced by businessmen, especially in the handicrafts sector, while exporting their products, it was decided that a study will be undertaken to review the problems in export procedures. Trade Promotion Centre shall be contacted with regard to this study and Mr. Lava Devkota shall be the main contact person in undertaking this study.

**iii) Review of Foreign Investment and One Window Policies:** Dr. Khanal expressed his interest in reviewing the industrial policy including the impact of removing minimum fixed capital investment of Rs. 20 million for foreign investment, a comparative review of incentives and facilities being given to foreign investors and problems associated with the One window system. A Terms of Reference shall be developed to look into these issues. Dr. Neal Cohen shall also ask for literature on foreign investment incentives from AID missions in neighbouring countries.

iv) Urban Microenterprise Financing Program: ACCION Model: A summary of the ACCION model, an urban microenterprise lending program, which is successfully being implemented in Latin America was distributed at the meeting. The committee shall look into the possibility of further work in this area in the next meeting.

v) Impact of Liberalization: A proposal from Dr. Roop Khadka for publishing a book on economic issues and the impact of liberalization on different sectors was discussed. It was agreed that such an effort is needed and that different writers, each with a special sectoral expertise should write technical papers on the respective sectors which could then be presented at a national seminar and compiled into a book form. This could be one of the project's efforts in the long term.

vi) Policy Analysis Wing: The committee was informed that the policy analysis wing (PAW), previously housed at the National Planning Commission, had conducted some studies to provide quick analysis and recommendations on sector specific policy issues. However, the PAW is presently non-existent and if the committee is interested in a similar effort, then some sector specific policy issues would need to be identified first.

At the end of the meeting, the Chairman thanked all members present and concluded the meeting at 5:30 p.m.

Submitted By,

Ms. Anita K. Tuladhar  
Member Secretary  
April 4, 1995

## ELP's Business Related Programs Undertaken /Underway

### a. Past Programs

#### 1. Management Training for Business Executives

<i>Type of service</i>	<i>On-the job, continuing education training</i>
<i>Focus:</i>	Professional Management Development
<i>Target group</i>	Mid level managers of small scale private (family owned) business enterprises
<i>Total participants:</i>	72, covering three districts : Kim, Pokhara, Hetauda Training was held at: Pokhara-1, Kathmandu-2, and Hetauda-1 as an experimental effort)
<i>Participants Organization profile:</i>	Small to medium sized private businesses Representation from service sector (Hotels, Travel, Airline, news media); manufacturing (consumer durable/non durable goods)
<i>Implementing Agencies:</i>	Tribhuvan University- School of management conducted 2 training NASC conducted two trainings
<i>Program Outcome:</i>	74 percent participants directly applied the training inputs to their work <u>Each participants' input/initiation as a result of the training:</u> -properly allocated funds leading to better financial performance -control of stock and inventory: -achieved higher sales thro' appropriate marketing strategies -tapped new customers by realizing the importance of an aggressive sales promotion and effective PR -Better performance, less absenteeism of employees as a result of improved vertical communication and delegation of authority

*Present Status:* A bridging contract was signed between F.L.P.S and CIDM-TU to develop curriculum based in past experiences, and focus on a long term program.

## 2. Business Literacy Program

*Type of service:* Provided *training* based on their need for e.g.: on basic functional areas of business, guidance as how to 'create new businesses' or to improve your existing business

*Focus:* Business Literacy, Entrepreneurship development training for micro-enterprises and small scale businesses at the district levels

*Target group:* Potential entrepreneurs, existing entrepreneurs

*Total participants:* 701 participants from ten districts

*Implementing Agency:* District Chambers of Commerce & Industries

*Participant districts:* Palpa, Damak, Makwanpur, Siddarthanagar, Lalitpur, Kailali, Pokhara, Morang, Narayanganj, Birgunj

*Program Outcome:*

- \* Opened micro businesses.
- \* Improved efficiency of business (i.e. started keeping methodological accounting records)
- \* Developed entrepreneurial traits, exploring new ideas and business ventures

*Status:* The evaluation of the program conducted in 10 districts found the training to be useful, but emphasized the need to develop a total package on 'micro enterprise support' which includes several areas such as consultancy, in skill devt., technology know-how, marketing and possibly access to credit. A full package will cater to their overall need, rather than one service at a time.

At present, we are working with Small Business Promotion Project (SBPP) to pursue this idea, find modalities as how we could develop a program which is beneficial for micro entrepreneurs.

## 3. Support for Pre-MBA, MBA program

*Type of service:* Financially supported the University by providing scholarship to 17 students for the Pre-MBA program. Following the completion of the 1

	year Pre-MBA. 10 students were granted scholarship to continue their MBA program
<i>Focus:</i>	Encouraging 'Business education' and supporting the first private sector University in Nepal providing a Business degree
<i>Target group:</i>	Students representing various districts of Nepal
<i>Implementing Agency:</i>	School of Management, Kathmandu University
<i>Program Outcome:</i>	Professionally trained business students capable of working for the private sector

#### 4. Strengthening the District level business activities

- |                           |   |
|---------------------------|---|
| • <i>Type of service:</i> | Provided <i>institutional support</i> -office equipments to 24 District Chambers of Commerce and Industries |
| <i>Focus:</i>             | Business strengthening at the district level  |
| <i>Outcome:</i>           | The well equipped DCCIs have been able to provide better service to the local business community            |
  
- |                           |  |
|---------------------------|--|
| • <i>Type of service:</i> | Conducted <i>Industrial Exhibition</i> , displaying major products of the respective districts |
| <i>Focus:</i>             | Assist participants in building fruitful business contacts with the buyers                     |
| <i>Target group:</i>      | Local Business people with representation from the districts                                   |
| <i>Venue:</i>             | Palpa, Kathmandu   |
| <i>Program Outcome:</i>   | Participant business firms enjoyed good sale and production orders for their goods             |
  
- |                           |   |
|---------------------------|---|
| • <i>Type of Service:</i> | <i>Eastern and Western regional conferences</i>   |
| <i>Focus:</i>             | The role of private sector in the liberal economy |
| <i>Target group:</i>      | Local businesspeople                              |
  
- |                           |  |
|---------------------------|--|
| • <i>Type of service:</i> | Published <i>Monthly Newsletter- Highlights</i>  |
| <i>Focus:</i>             | Highlights of pertinent economic and policy issues   |
| <i>Target group:</i>      | Circulated to all BDC members, trade/commodity association and District Chambers of Commerce |

#### 4. Others/miscellaneous:

- |                           |  |
|---------------------------|--|
| • <i>Type of service:</i> | Financial support for FNCCI delegation's visit to India and Bangladesh |
|---------------------------|--|

*Focus:* Encourage private sector participation at Conferences, workshops and study tours in business development areas.

*Organizing Agency:* FNCCI members (Businessmen)

- *Type of service:* Supported workshop tailored for improving Micro Entrepreneurs business operation

*Focus:* Semi-rural women micro-entrepreneurs

*Implementing agency:* Women Entrepreneurs Association Nepal (WEAN)

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## **b. Present Work Areas:**

### **1. Business Education Program**

*Type of service:* *On-the job, continuing education training*

*Focus:* Professional Management Development in Nepal

*Target group:* Mid level managers of small scale private (family owned) business enterprises

*Present Status:* Central Department of Management-FU, with the support of a technical committee comprising of private sector representatives are working on developing a package for the long term program. The curriculum is modified as a result of the evaluation of the program. The package is aiming to be more as a hands-on-type of a program for practicing managers, rather than the traditional type of trainings

### **2. Business Development Consultancy Services**

*Type of service:* *One-on-one consulting/support services*

*Focus:*  
-Local Business Consultancy (expert assistance in various areas of business operations of Business people helping business people)  
-Technical skill development

*Target group:* Small Business Enterprises, producer groups

*Work already done:*

- Women producer groups of three districts- Fehrathum, Dhankuta and Biratnagar in product development and building marketing links
- Paper products- provided consultancy to a Nepali paper manufacturer in developing a "Marketing plan" for their products

*Impact:*

- Producer groups received orders from buyers in Kathmandu
- In-house consultancy enhanced the efficiency of their operation: better accounting, pricing, quality improvement
- One group from Teherathum received a contract for production for a year

*Work under discussion:*

- Product development/marketing support to women producer groups of Makwanpur and Palpa districts
- Marketing support to group members of the Rural Grameen Banks
- Develop Uniform accounting system for small hotels & lodges- Hotel Assoc. Nepal

### 3. Skill and Product Development for Export Market

*Type of service:* Provide technical assistance on products, market needs, designs and establishing contacts in other countries for three export oriented products: Nepali woolen carpets, handmade paper and silver jewelry

*Implementing Agencies* Central Carpet Industries Association Nepal (CCIAN), Handicraft Assoc. Nepal (HAN)

*Beneficiaries:* Members (Entrepreneurs) of the two associations CCIAN, HAN

*Status:* Work is underway. Internauonal Marketing and Communication Corp. (IMCC), a consulting firm based in the US, is the foreign counterpart of the implementing agencies. A team of product development and Marketing specialists work in each product line with the respective associations

#### 4. Business Information Media Program

- Type of Service:* **Radio Program:** Advice on how to set up your own business at the district level, highlight about opportunities in various small scale & micro-enterprises, and business related information.
- TV program:** Highlights present economic policies and issues, business/industry related sector specific coverage, women owned and micro business enterprises examples, business news/events of the past one week, and review of the weekly stock market.
- Articles on print media :** Policy issues, weekly market news, success stories of enterprising entrepreneurs, business/trade related information profile
- Implementing Agency:* Federation of Nepal Chamber of Commerce and Industries (FNCCI)
- Beneficiaries:* For radio program- rural people who need access to information relating to various field of business i.e. agro, cottage & smallscale
- For TV and Print media- Urban people
- Status:* The media program continues for three more months. This type of program is needed as there is no relevant information about the business scenario of Nepal.

#### 5. Business Advisors Program

- Focus:* Various Management areas such as Finance, Accounting, Marketing, HRD, Management, Training
- Target group:* Small/medium sized business enterprises
- Type of service:* One-on-one consulting service for a period of ten months provided by US MBA students
- Past assignments*
- Year 1993-94
- Surya Silk Pvt. Ltd.
  - National Finance and Savings Co. Ltd.
  - Mahaguthi (Handicraft retailer/exporter)
- Year 1994-95
- Himalayan Health Food Pvt. Ltd.
  - Nepal Finance and Savings
  - Association of Craft Producers
  - FNCCI

# Economic Reform in Nepal: A cursory Assessment<sup>1</sup>

by

Praveen M. Dixit<sup>2</sup>

निर्णयको छु जो लक्ष्य गोही करामा ।  
 खडा ह उमेमा गरु घोर धामा ॥  
 कने विधन नाधा परेमा उचार ।  
 न ह कामलाई तगाऊ न पार ॥

लेखनाथ ।

## Abstract

The paper provides a synopsis and assessment of the economic reform programs pursued by the Government of Nepal during the last four years. It indicates that there has been substantial liberalization in external trade policy and the financial sector. But, problems in implementation have hampered the effectiveness of reforms in tax and industrial policies. The paper proposes that the Government give immediate attention to fiscal austerity as well as to monitoring and supervision of the financial market. It concludes by suggesting that future emphasis be on sound economic policies that are developed transparently and are consistent with the global economic environment.

<sup>1</sup> Paper presented at the "Seminar on Fiscal and Monetary Policy in Nepal", March 8, 1995, Center for Economic Development and Administration, Tribhuvan University, Kathmandu.

<sup>2</sup> The author is Director, IRIS-Nepal Project, University of Maryland, USA. He is currently on leave from the Economic Research Service, U.S. Department of Agriculture, Washington, DC. The views expressed in this paper are those of the author and do not necessarily represent those of the various institutions he is affiliated with.

## EXECUTIVE SUMMARY

### Introduction

- o. The primary objective of this paper is to provide a cursory assessment of the economic reform programs pursued by the Government of Nepal during the last four years. In doing so, the paper briefly reviews the policies and programs that were implemented during the period under analysis and proposes a guideline for future course of action.

### Economic Policy Changes in the 1990s

- o. Much of the economic reform program that took place in the 1990's was under the joint auspices of the Eight Plan prepared by the National Planning Commission and the Extended Structural Adjustment Facility (ESAF) arrangement of the International Monetary Fund. Changes in the global political and economic climate made it easier for the Nepali Congress Government to pursue reforms at a pace faster than previously;
- o. A wide array of external and trade policy reform was undertaken. The dual exchange rate was abolished, quantitative restrictions and import licenses were eliminated, peak tariff rates were lowered by more than half to 110 percent, and export procedures were simplified with facilities for duty draw back and simpler documentation;
- o. The disarray that existed in the tax system was one of the primary concerns of the previous Government. The Eight Amendment to the Income Tax Act which introduced the self-assessment scheme was the center piece of the reform agenda. Some other reform initiatives on direct taxes included lowering the corporate income tax rate to 35 percent and reducing the minimum personal income tax rate to 10 percent. On indirect taxes, the number of excisable items fell to 6 and the sales tax slabs were reduced to 2;
- o. Reforms in the financial sector was Nepal's most visible foray into economic liberalization. Four new banks and 13 finance companies have come into operation in the last four years. The capital market got a boost with the establishment of the Securities Exchange Board and the opening of a trading floor at the Nepal Stock Exchange in January 1994;
- o. The introduction of the Industrial Enterprise Act, 1992 was the center pieces of the industrial policy reform agenda. The act and the associated policy changes simplified considerably the registration and licensing procedures. The subsequent Foreign Investment and Technology Transfer Act opened up foreign industrial investments, specified terms and conditions for repatriation of profits, and engineered the one-window policy;

- o Privatization proceedings were completed on 10 of the 62 public enterprises (PEs) in two phases. For those PEs remaining in the public sector, the Government allowed greater managerial autonomy and more flexible pricing policies. Fertilizer and petroleum product prices, electricity tariffs, and water charges were consequently raised;
- o Reforms in the agricultural sector has been slow in coming. The boldest initiative was in 1992 when the Government allowed imports of selected fertilizers by the private sector;

### Assessing the Economic Impacts of Reform

- o Very little statistical analysis has been done to-date to isolate the effects of economic reform. As such, one should be cautious in attributing the changes in economic indicators to the process of economic reform. Moreover, recent empirical evidence suggests that it has taken Asian countries four to five years to show the fruits of economic reform;
- o Non-agricultural Gross Domestic Product (GDP) during the last three years (FY 1991/92 to FY 1993/94) grew by 7.6 percent compared to 5.5 percent in the second half of the last decade. The share of industry in GDP rose from 11.3 percent in FY 1981/82 to 15.9 percent in FY 1992/93. To the extent that most of the liberalization efforts have been focused in the industry and services sectors, these statistics suggest that some of the effects of economic reform may be starting to come through;
- o Internal revenue mobilization in the last two fiscal years increased at an average annual rate of more than 25 percent. The ratio of tax revenue to GDP rose from 9.2 percent in FY 1991/92 to 10.3 percent in FY 1993/94. The tax effort is expected to reach 11.2 percent in FY 1994/95. Government and business officials attribute these increases in revenue to the tax reform efforts undertaken;
- o The average annual growth in exports more than tripled from 14.4 percent during FYs 1986-90 to 42.3 percent during FYs 1991-94. The share of manufacturing exports rose from 82.7 percent to 88.7 percent during the last four years. These statistics, along with the estimates of a greater than unitary export elasticity with respect to the exchange rate, indicate that the dual exchange rate system had a considerable anti-export bias;
- o The structure of imports has not, however, changed despite reductions in custom duties for industrial raw material and capital goods. This suggests that liberalization in the trade regime has promoted imports of products not necessarily used for industrial growth;
- o The impacts of reform are very visible in the financial sector. Nearly 20 new banks and finance companies have entered the market since 1992, and the

nominal interest rate dropped from 21 to 15 percent during the last two years. The growth in the capital market has also been substantial: the volume of public issues in the primary market quadrupled in one year, and the total turnover at the Nepal Stock Exchange during the last 12 months was more than triple the combined value in the last 13 years;

- o. Over 3,000 industrial units were registered between July 1991 and May 1994. The total in FY 1991/92 and FY 1992/93 was more than double that in the two previous years. 153 joint venture units--62 percent of the total since 1975-- have been registered since March 1992;
- o. The growth in domestic airline traffic during the last three years has been one of the more discernible elements of industrial policy reform. In two years since the introduction of private airlines, domestic passenger volume doubled while cargo shipment quadrupled. RNAC's domestic market share has fallen to 36 percent;
- o. Public enterprises that have been privatized are making new investments and increasing their net worth. Investments in Bhrikuti paper and Harisiddhi Brick alone in FY 1993/94 were almost 50 percent higher than cumulative investment by Government in all the privatized firms through FY 1992/93. The net worth of the privatized firms is 45 percent higher than prior to privatization;
- o. Nearly 800 new job opportunities have been generated by the privatized firms so far. Bhrikuti Paper and Harisiddhi Brick together expect to create 1,000 new direct employment positions by the end of 1996. However, workers in most of the privatized companies are not yet better off financially although more than half expect to be eventually.

#### **What Next on Economic Reform?**

- o. The first and foremost task for the Government is to continue on a path of fiscal austerity. It should concentrate on curtailing the growth in regular expenditures and bringing the size of the budget in line with resource availabilities and implementing capacities. This is especially true for the new government which is committed to populist programs such as food subsidies, land reform, and employment banks;
- o. It does not take a genius to figure out that reforms in Nepal's tax system should concentrate on simplicity, both in concept and implementation. Introduction of the value added tax should be pursued vigorously and accompanying this should be measures to simplify the income tax act and reduce the marginal tax rates. Replacement of the octroi and changes in the wealth tax should also be considered. From a global competition perspective, how soon these changes can be implemented is as important as what needs to be done;
- o. Capital account convertibility and floating the Nepali currency vi-a-vis the Indian

Rupee have been hotly debated locally. While both of these are inevitable within the next few years, additional homework is needed to understand the trade structure, especially with respect to India. Fiscal stability and financial sector strengthening are the keys to either move;

- o. Improvements in customs valuation and rationalization of the tariff structure should also continue. Tariff changes, however, should be based on long-run economy-wide goals that are conceptually consistent rather than knee-jerk reactions to business and industry interests. Possible accession to the World Trading Organization (WTO) should be kept in mind while designing policy changes;
- o. Banks and financial institutions have mushroomed in the last three years without due consideration to deposit insurance. The future could be costly for both investors and the exchequer unless the Nepal Rastra Bank can provide proper monitoring and supervision. In this context, it might be judicious for the central bank to review its policy of continuing to invest in business ventures like insurance companies, financial intermediaries, stock exchanges, research organizations, and the like.
- o. Investor protection is an issue of prime concern for the capital market as well. Institution and capacity building should be considered for the Securities Exchange Board and the Nepal Stock Exchange. Besides, the mandate of the various regulatory institutions, including the Nepal Rastra Bank, the Securities Exchange Board, and the Company Registrar's Office, should be clearly demarcated. The Nepal Stock Exchange also should more carefully monitor activities of brokers and market makers, especially larger players like the NIDC Capital Market.
- o. Three issues need to be quickly looked into regarding industrial policy: i) further improve registration and licensing procedures for both domestic and foreign investments, ii) review the tax exemptions given in the Industrial Enterprise Act, and iii) eliminate the Rs. 20 million minimum capital requirement on foreign investments except for a pre-determined negative list;
- o. A properly functioning legal system is essential for sustaining the process of economic reform. Two legislation that have a large bearing on economic decision-making--Company Law and Contract Law--have to be amended soon if the process of economic liberalization is to be sustained. Other legislative reforms that impinge on business promotion, such as anti-trust, exit policy, labor laws, and consumer protection, should also be given due consideration.

### Lessons

- o. While the recent reform efforts have been impressive, they are not devoid of problems. Effective execution of policy decisions is a continuing concern and implementation seems to be laced with many little irritants that adversely affect

business confidence. Transparency has been another key stumbling block to the sustenance of the reform process. The Eighth Amendment to the Income Tax Act and Phase I of the privatization program are two vivid examples of this.

- o. One other problem that has hounded Nepal's economic reform initiatives is the inability of the Government to communicate the reasons for and merits of reform. Very little was done to educate policymakers and the public in this regard. A few technocrats residing in Government institutions cannot sustain the reform process on their own. Economic reform has to be broad based and publicly communicated for it to attain sustainability;
- o. Often in Nepal we hear references to the economic policies of a particular party or a regime. Thinking of policy in this perspective is being narrow minded. Policymakers should enlarge their horizon and talk about sound national policies to achieve market-driven growth. Policymaking is about having a vision and the commitment to carry it through. The present Government has laid out on paper its vision for Nepal. The challenge now is to attain that vision by pursuing economic policies that are fundamentally sound, have been developed in a transparent manner, and are consistent with the global economic environment.

# ECONOMIC REFORM IN NEPAL: A CURSORY ASSESSMENT<sup>1</sup>

## I. Introduction

Two years ago I had the privilege of standing on this very rostrum to review and then propose an economic reform program that we as donors believed might be in the best interest of Nepal. A full 24 months later you have asked me again to address this same gathering and assess the economic impact of the market reform programs undertaken by the Government of Nepal during the last few years.

All of us are aware that a lot has happened both politically and economically since the last time we met. For one, the political leadership in the country switched hands from the Nepali Congress to a popularly elected minority Communist Government. But, unlike the Communists of the cold war era, the Communist Party of Nepal (United Marxist-Leninist) has committed itself to pursue market friendly policies (CPN-UML, 1994)<sup>2</sup>.

The other set of notable change that took place during the intervening period was in economic policies. Wide ranging structural reforms were carried out by the Nepali Congress Government that encompassed, among others, the financial, trade, legal, and industrial sectors. From privatization of public enterprises to tax reform, from elimination of the Statutory Liquidity Ratio to current account convertibility, from the introduction of a new Finance Company Act to the establishment of a trading floor at the Nepal Stock Exchange, the changes were sweeping.

The mandate given to me today is to talk about the structural reform programs that were instituted in the recent past and to provide an economic assessment of their impacts. To some extent, the latter is a tall order given the short period of time: many of the economic benefits from structural reform programs do not manifest themselves for at least four to five years (McMillan, Rauser, Johnson, 1991). Moreover, very little quantitative assessment of the programs has been done to-date in Nepal, and heresy rather than hard facts has been the order of the day.

Be that as it may, my attempt here is to provide an objective assessment of the economic reform programs pursued during the last few years and propose a guideline for future course of action. The period of analysis covers four years, from July 1991 to December 1994. My intent is to cut across political lines and examine reforms undertaken by both the Governments within the time frame chosen. Realistically, however, information availability limits most of our focus to reforms that were instituted by the Nepali Congress Government.

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<sup>1</sup> The author would like to thank Govind Thapa, Ministry of Finance, as well as Anita Tuladhar and Narendra Basnyat, both from the IRIS-Nepal Project, for their comments on an earlier version of the paper.

<sup>2</sup> Complete citation is listed in References.

The paper is organized into four parts. It begins with a brief synopsis of the policies and programs that were instituted during the last four years. This is followed by an economic assessment of the reform programs, focusing on a few select sectors where data are available. The policy choices to pursue are discussed next. The paper concludes with a discussion of the lessons learnt from the past and provides suggestions on the approach for the future.

## II. Economic Policy Changes in the 1990's

Much of the economic reform program that took place in Nepal in the 1990's was under the joint auspices of the Eight Plan prepared by the National Planning Commission and the Extended Structural Adjustment Facility (ESAF) arrangement of the International Monetary Fund (IMF, 1992b). The Eight Plan was approved by the Nepali Congress Government in July 1992, a full year after coming into power (National Planning Commission, 1992). ESAF, on the other hand, was commissioned in October 1992 and covers a period of three years. The achievements of targets under ESAF implies releases of two tranche of funds from the IMF to the Nepal Rastra Bank.

While the focus of this paper is on reform efforts pursued during the 1990's, it is worth mentioning that the process of economic liberalization did not start in 1992 *per se*. The Panchayat regime had also initiated a three-year economic reform agenda under the IMF's Structural Adjustment Program (SAP) in FY 1986/87. The outcome of that effort, however, was largely negated by the Indo-Nepal trade and transit impasse in 1989 (Thapa, 1995). But, with the dawning of democracy and following changes in the global economic/political climate in the early 1990's, the Nepali Congress Government was better placed to pursue reforms at a pace faster than previously.

The reforms undertaken during the last four years have been very wide-ranging, extending well beyond economic policies. Our focus, however, is to concentrate on economic policy changes, analyzing others only to the extent that they effect economic decision-making. And, even with economic policies, the emphasis will be on the end reform rather than describe the path that was tread to get there.

### Fiscal Management

The most important element of Nepal's ESAF arrangement with the IMF was fiscal targets. Based on the concept that budgetary deficits are symptomatic of macroeconomic mismanagement, the Government of Nepal accepted a stringent set of fiscal targets: reduction in the Government deficit from 8.75 percent of Gross Domestic Product (GDP) in FY 1991/92 to 7.75 percent of GDP by FY 1994/95, and a corresponding decline in internal borrowing from 2.0 percent of GDP to 0.5 percent of GDP during the same period. The other macroeconomic targets to be achieved include average annual rate of growth of GDP of 4.5 percent, inflation rate of 5 percent by FY 1994/95, and increases in revenue mobilization from new measures equivalent to 0.5 percent of GDP each year.

Accompanying these targets were a series of reform initiatives that touched all sectors of the economy, from macroeconomic policy to administrative reforms. These reform initiatives, for the most part, were within the framework of the policy proposals enunciated in the Eighth Plan.

### Reform of External and Trade Policies

The Government of Nepal undertook a wide array of exchange rate and trade policy reform programs during the period under analysis. On February 13, 1993, the Government abolished the dual exchange rate system and announced full convertibility of the Nepali Rupee for current account transactions. This announcement followed almost a year of partial convertibility under which exporters surrendered 25 percent of their convertible currency at the official exchange rate and received a market determined exchange rate for the rest (World Bank, 1994). Subsequent reform measures in the external sector included, among others, arrangements that allowed exporters to retain all their hard currency earnings in convertible accounts, facilities for opening convertible currency accounts for all foreign exchange earners, provisions for imports from India through dollar payments, and sanctions to commercial banks to extend credit on convertible currencies. One other provision--supplier's credit where Nepali businesses could borrow in convertible currency from foreign associates of local banks--was introduced but later withdrawn.

Elimination of quantitative restrictions and import licenses has been the other major achievement on the trade policy front. Effective July 1993, the Government abolished the system of foreign exchange auction for imports of industrial raw material and put everything under the Open General Licensing (OGL) system. The elimination of import licenses, however, was gradual. It started with reduction to a list of 31 in February 1992, to 12 in July 1992, to 6 in March 1993, and to complete elimination in July 1993. The move itself was bold for two reasons: first, it meant a loss of substantial auction revenue to the Government, and secondly, with current account convertibility, imports of consumer items were also freed up from quantitative restrictions.

Rationalization in the tariff structure has been gradual but substantive. Peak tariff rates fell from 255 percent in FY 1991/92 to 110 percent in July 1994. Besides, the tariff rate structure was considerably simplified: the number of slabs (categories) fell from more than 100 in the 1980's to 6 in FY 1994/95 (Ministry of Finance, 1994c). And, even though the highest slab is 110 percent, there are less than five items in the group; the largest number of import items come within the custom duty of 10-20 percent. Another simplification in the tariff regime was the elimination of additional duties on third country imports in FY 1993/94; preferential treatment to SAARC exporters are currently being given through concessions on the basic rates applicable for all countries.

Export procedures too were simplified, with facilities for duty drawback, bonded warehouse, and simpler export documentation. These direct export incentives were designed to overcome any anti-export bias that import tariffs, especially those on industrial inputs, might have. However, the Government did take a regressive step in July 1993 in introducing a 2 percent export surcharge. The surcharge was reduced

to 1.5 percent in December 1994.

The CPN-UML government, in its policy pronouncements, has dedicated itself to protecting "national industries" (His Majesty the King, 1994). It was in this context, perhaps, that their first budget in December 1994 raised import tariffs on a number of items, including textiles (Ministry of Finance, 1994a). A clearer picture of their policies will most likely emerge in the next budget in July 1995.

### Reform of Tax System

The problems with Nepal's tax system have been well documented (IMF, 1992a; Dixit, 1993; Baagchi, 1994). They range from ambiguity in purpose, to narrow tax base, to low elasticity, to arbitrariness in implementation. Little wonder then that Nepal's tax efforts--at 10.3 percent of GDP in FY 1993/94--is one of the lowest in the world (Cohen, 1995).

The disarray that existed in the tax system was one of the primary concerns of the previous Government. Many measures were pursued to remedy the malady. The focus was on simplicity, both in concept and in structure.

The Eighth Amendment to the Income Tax Act was one of the center pieces of the reform agenda. The primary feature of the amendment was the introduction of the self-assessment scheme. Unfortunately, problems with implementation and excessive discretionary authorities accorded to tax officials made the reform very unpopular with businesses. Subsequently, the Government undertook a series of steps to remedy the problem, including re-writing the laws so that the burden of proof lies with the tax authorities.

Some of the other measures on direct taxes that were introduced through the budget speeches proved more popular: the marginal income tax rate for corporations was lowered to 35 percent and the individual tax brackets were confined to 3 rates (10, 25, and 35 percent). The Government also lowered rates on property taxes, and allocated 75 percent of the revenue to local municipalities.

Simplification of the tax system was extended to both the excise and sales taxes as well. The number of excisable items fell from 38 in FY 1991/92 to 6 in FY 1994/95, and the sales tax rates were dropped from 5 to 2 (10 and 20 percent) in July 1993. Preparatory work had also begun on the Value Added Tax (VAT) which was to form the mantle of future revenue reform efforts.

The present Government is also committed to improving the tax system and rooting out administrative inefficiencies. Their emphasis, however, is to be on direct rather than indirect taxes because the latter is considered regressive (CPN-UML, 1994). In January 1995, the Government established a Tax Review Task Force to provide them with guidelines on the path to pursue. The task force is expected to bring out its report by May 1995.

## Reform of Financial Sector

Nepal's reform efforts in the financial sector began in the 1990's when the Nepal Rastra Bank eased entry restrictions with an amendment to the Commercial Bank Act. As a result, three banks - Nepal Arab Bank, Nepal Indosuez and Nepal Grindlays - came into operation prior to the 1990's. However, it was only in 1992, after the Nepal Rastra Bank (NRB) adopted a liberal attitude in permitting commercial banks to open up, that the financial sector liberalization really took off. Four new commercial banks have come into operation in the last three years, and 8 more have sought permission to open.

To assist commercial banks be competitive and lower operation costs, the NRB in July 1993-eliminated the statutory liquidity ratio (SLR) which required all banks to invest a certain portion of their deposits in Government bills. This reform had the effect of freeing up resources for commercial banks to invest. Here the market dictated. The elimination of the SLR had followed another major move in FY 1989/90, interest rates were deregulated allowing commercial banks to set their own rates.

The amendment of the Finance Company Act in 1992 was another milestone in financial sector reform. Thirteen finance companies have been established since then and 33 more have sought permission from the Nepal Rastra Bank to operate. Their activities range from merchant banking and brokerage to leasing.

The Government's reform efforts were not confined solely to banking activities. The capital market got a boost with the amendment of the Securities Exchange Act in 1992, which among other things, introduced provisions for setting up a regulatory body as well as a stock exchange. While the regulatory body (Securities Exchange Board of Nepal) came into existence in May 1993, the Nepal Stock Exchange opened its floor for trading activities on January 13, 1994. Since then, trading in both the secondary and primary markets have been phenomenal.

The CPN-UMI Government is also committed to improving the financial sector, both the banking and non-banking areas. Their policy in this regard is yet to be spelled out.

## Reform of Industrial Policy

The Industrial Enterprise Act, 1992 and the Industrial Policy, 1992 were the center pieces of the Government's reform efforts during the last three years. The policy addresses a diverse set of issues that effect industries, including customs duties, taxation, registration and licenses (Ministry of Industry, 1992). The main thrust of changes in custom duties is to simplify the existing tariff structure. On taxation, the policy encourages investment in less developed areas, training and research, re-investment of profits, diversification, and privatization. A five-year tax holiday has been provided for new investment, with additional incentives for fulfilling other requirements, such as industries of "national priority".

Extensive changes were also made in the registration and licensing procedures. All businesses, except cottage industries, are required to register, but the registration process was simplified considerably<sup>1</sup>. A Company Registrar's office was opened for the purpose. Registration is meant to provide legal recognition, not used as an instrument for licensing. Only businesses that impact on public health, the environment, defense, or have foreign collaboration must secure permits to operate.

The Foreign Investment and Technology Transfer Act, 1992 was subsequently enacted to attract foreign investment in various sectors, including hydropower. This act opened up for foreign investment all industries with fixed investments exceeding Rs. 20 million, clearly specified terms and conditions for repatriation of profits by foreign investors, provided assurances against nationalization and opened up hydropower development for foreign investors. Concurrent with this was the introduction of the one-window system to provide all government services to foreign and domestic investors through a single institution.

The Government also made separate policy pronouncements for specific industrial sectors. A revised civil aviation policy was adopted in 1991 that allowed the entry of private airlines. Similarly, a new hydropower development policy that permitted private power generation was promulgated in 1992.

The CPN/UMI Government, in its election manifesto, has emphasized the need to promote domestic industries. Policies and programs to support this agenda has not, however, been announced.

### Reform of Public Enterprises

The costs of maintaining public enterprises (PEs) was an issue of big concern to the previous Government. In 1992, gross transfers to PEs was more than expenditures on health and education combined while net transfers were more than total foreign grants to the country. And, although 10 percent of the manufacturing work force was employed in PEs, these resources yielded dividends worth 0.02 percent of GDP and losses equivalent to 1.6 percent of national income in FY 1991/92.

The previous Government completed privatization proceedings on 10 public enterprises in two phases. In the first phase, three PEs--Bhrikuti Paper Mill, Hamsiddhi Brick & Tile Factory, and Bansbari Leather & Shoes Factory--were sold through the sale of assets and business. The remaining 7 privatization were undertaken in Phase II. Four PEs--Balaju Textile Industry, Nepal Lube Oil Limited, Nepal Bitumen & Barrel Industry, and Nepal Film Development Corporation--were disposed off by selling company shares. Two others--Jute Development & Trading Corporation and the Tobacco Development Company--were liquidated. Of the ten PEs privatized, Bansbari Leather & Shoes was sold to a foreigner; all others were purchased by Nepalis. Irrespective, the Government required that 25 percent of the shares had to be sold to the Nepali public within a year of purchase, while 5 percent had to be offered to employees at a 25

<sup>1</sup> Cottage industries are required to register within six months after starting their operations.

percent discount with a deferred payment schedule.

For those PEs remaining in the public domain, the Government took a number of steps to improve their operational efficiencies. More flexible pricing policies were introduced and prices adjusted. In this context, the National Electricity Authority (NEA) raised electricity tariffs by an average of 60 percent in 1991, 24 percent in March 1993, and by 33 percent in March 1994; the Nepal Water Supply Corporation raised tariffs by 100 percent in each of 1991 and 1993; the Nepal Oil Corporation increased petroleum prices by 13 percent in August 1992 and by 25 percent in early 1993; and, the Agriculture Inputs Corporation eliminated subsidies on all types of fertilizers other than urea. Finally, to encourage greater financial discipline and commercial orientation, the Government terminated the practice of guaranteed commercial credit to PEs.

Privatization proceedings on seven others, including the Raqlupati Jute Mill, the Dairy Development Corporation, and the Nepal Tea Estate, have been stalled since the dissolution of Parliament in July 1994. The CPJ/UPJ Government is also committed to privatization of public enterprises; but before proceeding any further, it would like to review past experiences. The present Government has, however, made it known that if PEs can be operated profitably in the public sector, it would be inclined to keep it there.

#### Reform of Agriculture Policy

Reform in the agricultural sector has been slow in coming. Part of this may reflect the large dependence of the vast majority of the rural poor on this sector; elimination of subsidies under such circumstances could be politically costly. Secondly, India still maintains subsidies on agriculture, and the open border with this neighbor makes it difficult to pursue policies for tradeable products that are very different than theirs.

The boldest initiative that the Government took in agricultural reform was the provision in 1992 that allowed imports of selected fertilizers by the private sector; but, no private sector imports took place until June 1993 for a variety of reasons: i) the foreign exchange allocated for each order of fertilizer was inadequate for bulk purchases, and ii) the Government had not clearly established that importers could sell the fertilizers at the retail level. By the time two issues were resolved in mid 1993, the Nepali Rupee had been made fully convertible, the foreign exchange allocation system eliminated, and fertilizer prices were raised and subsidies eliminated, except for urea.

Other than these, there have been very few agricultural related policy reform initiatives undertaken. Sugar prices were deregulated in 1994, and the Nepal Food Corporation (NFC) was given greater autonomy in setting prices. But, price control on output is still a constraint for agricultural producers--purchases by the NFC are at below market prices.

To counter the inadequacy of formal rural credit, the Nepali Congress Government, in FY 1992/93, established the Eastern and Far Western Gramoon Bikas Banks to provide institutional credit to women involved in microenterprises. But, the Government

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continues to subsidize 80 percent of the interest payments, a measure that is not consistent with the concept of enterprise sustainability and fiscal conservatism. What makes the policy even worse is that similar banks in the non-governmental sector-- Nirdhan and the Center for Self-Help & Development (CSD) -- are running successfully without resorting to public subsidies.

The CPN-UML Government's focus on agriculture appears to be two folds: i) to implement a comprehensive land reform program that would give land to the tiller, and ii) provide subsidies on food by resorting to fair price shops. Detailed work programs on both these have not yet been spelled out.

### Legal Reform

Sustained economic growth cannot take place without a properly functioning legal and judiciary system to facilitate market transactions. The absence of these raises the risks of business failures and increases the costs of capital.

To remedy this situation, the previous Government had initiated a number of legal reform activities. Principal among these was the revision of Company Law. The present Company Law is ambiguous in many respects; it does not protect the rights and interests of shareholders, makes no distinction between public and private limited companies, and assigns extensive powers to the Company Registrar's Office. The revised version, which emphasizes internal governance rather than Government regulations, had been approved by the Council of Ministers and was ready for tabling in Parliament before the Lower House was dissolved in July 1994.

Drafting of a new Contract Law has been also underway. The present Contract Law does not have many vital provisions related to the drawing up and execution of a contract. Unless Nepal's Contract Law is brought up to international standards, it will be difficult to attract foreign investors. Investors need a sense of security that contracts are valid and that arbitration and compensation provisions exist before they risk venturing into business.

The previous Government also was in the process of enacting a Consumer Protection Legislation that was designed to ensure that market failures in a liberal, open economy would not adversely affect consumers. The legislation that had been readied for Parliamentary approval focused on price disclosure, labelling requirements, fraudulent weights, quality control, and the redressal mechanism (IDMA, 1994). No attempt was made to use the legislation for price controls.

The present Government has not made any pronouncements on whether the legal reform initiatives pursued by the previous Government will be enacted. However, a Consumer Council has been recently established to look into problems faced by consumers. In addition, statements have been made about the need for a Commission Law that regulates agent's margins and penalizes governmental corruption.

### III. Assessing the Economic Impact of Reform Initiatives

The objective of the Government of Nepal's structural adjustment program has been to raise the standard of living of the population through greater reliance on market forces. But this is a long term goal, and three years of economic reform programs may not be sufficient to show these effects. It takes time to effectuate all the backward and forward linkages from policy changes. As was pointed out earlier, empirical studies indicate that Asian countries have needed at least four to five years to start showing the fruits of economic reform (McMillan, Rauser, Johnson, 1991). This, however, does not necessarily suggest that it is too early to look at the impact of reform efforts; merely that getting a handle of the end objective may be difficult.

Against this perspective, our approach to assessing the quantitative implications of reform is: i) to examine some macro level economic indicators that might suggest growth and increased competition, ii) to gauge the structural changes in the trade and industrial regimes, and iii) to study some sector specific activities. Even with this approach, we are still left with the difficult task of attributing such changes solely to the economic reform programs undertaken during the last four years. Rigorous statistical analysis is necessary to isolate the effects of reform.

#### Impact on Macroeconomic Indicators

The growth in per capita GDP is often cited as a measure of economic performance. During the three years under consideration (FY 1991/92 to FY 1993/94), the growth in real GDP averaged 4.7 percent, not much higher than the 4.6 percent between FY 1985/86 and FY 1989/90 (Ministry of Finance, 1994). This marginal difference, as well as the fact that over 55 percent of the real GDP emanates from agriculture which is dependent largely on the weather and has been mostly outside the purview of economic reform initiatives, suggests that the use of the GDP growth rate as an indicator of economic performance is not very meaningful.

What may be more appropriate in this context is to focus on the non agricultural sector. In the last three years, non-agricultural GDP grew by an average of 7.6 percent. This is higher than in the second half of the previous decade when such growth averaged 5.5 percent. Particularly impressive is the growth in the industry and services sectors. The share of industry in GDP rose from 11.3 percent in FY 1981/82 to 15.9 percent in FY 1992/93. To the extent that most of the liberalization efforts have been focused in these two sectors, these statistics suggest that some of the effects of economic reform may be starting to come through. But how much of this increase is the result of policy changes in the last three years is yet to be statistically tested.

Inflation is often considered one of the strong barometers of the performance of any reform program. High rates of inflation can be cancerous: typically, it lowers real income and savings, fuels interest rates increases, promotes erosion of investor confidence, and leads to the deterioration of trade balance. The economy seems to have done well on inflation during the reform period. The average annual rate of inflation fell from 21.0 percent in FY 1991/92 to single digits in each of the two

previous years. The rate of inflation is expected to decelerate even further in FY 1994/95. This check in the inflation rate despite large reductions in price subsidies is one indication that the long term implications of economic reform may be headed in the right direction.

Let us now look at some of the other macroeconomic indicators that suggest increased private sector participation in the economy. Gross fixed capital formation in the private sector grew by an average of 17 percent during the last two fiscal years; conversely, the share of public to total fixed capital formation fell from 47 percent in FY 1991/92 to 35 percent in FY 1992/93<sup>1</sup>. Between mid July 1991 and mid-July 1994, the volume of loan advances to the private sector nearly doubled from Rs. 15.0 billion to Rs. 31.8 billion; advances to Government and government enterprises, on the other hand, remained roughly the same at Rs. 1.5 billion. Loan disbursement by commercial banks for industry nearly tripled during the same period. These indicators suggest that private sector activities have expanded vis a vis public sector activities, a desirable feature of the process of economic reform.

#### Impact on Government Revenue

One of the more pleasing aspects of the reform efforts pursued in the recent past has been the effects on Government revenue. Revenue mobilization in the last two fiscal years increased at an average annual rate of more than 25 percent and will have nearly doubled in three years (Ministry of Finance, 1994a). As a result, the ratio of tax revenue to GDP rose from 9.2 percent in FY 1991/92 to 10.3 percent in FY 1993/94. The tax effort is expected to reach 11.2 percent in FY 1994/95 (Cohen, 1995).

Many government and business officials attribute these increases in revenue to the tax reform efforts undertaken: lowering customs tariff rates, simplifying income tax procedures, broadening the tax base, and strengthening revenue administration (Tiwari, 1995). The universal truth on tax reform appears to be applicable to Nepal as well: lowering tax rates increases tax revenues.

#### Impact on External Trade

The reforms in external trade policy during the last three years, as was indicated earlier, have been rather sweeping. What might be some of the effects of these reforms? Consider the following observations based on data from the Nepal Rastra Bank and a study prepared for the IRIS Center (Policy Analysis Wing, 1994a):

- o. the average annual growth in exports more than tripled during the period under consideration: from 14.4 percent during FYs 1986-90 to 42.3 percent during FYs 1991-94;
- o. the share of exports in GDP doubled from 5.3 percent in FY 1985/86 to

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<sup>1</sup> Data on capital formation is only available with a one-year lag.

10.3 percent in FY 1993/94;

- o. the structure of exports also changed: the share of primary to total exports fell from 17 percent in FY 1989/90 to 10.1 percent in FY 1993/94; conversely, the manufacturing share rose from 82.7 percent to 88.7 percent;
- o. the share of imports in GDP rose from 18.4 percent in FY 1989/90 to 27.5 percent in FY 1993/94; however, the structure of imports has not changed much;
- o. the export-import ratio (share of imports financed by exports) rose from 28.1 percent in FY 1989/90 to 37.4 percent in FY 1993/94; the ratio peaked at 44.0 percent in FY 1992/93.

A glance at these statistics, along with the findings of the study that the elasticity of export supply vis-a-vis the exchange rate is estimated to be 1.3 for the period under analysis, indicates that reform in the external sector has had a substantial impact on exports. The data and analysis seem to suggest that the dual exchange rate system pursued by the Government in the 1980's had considerable anti-export bias, and elimination of the system--even though gradually--led to the devaluation of the Nepali Rupee vis-a-vis convertible currencies and expansion in exports. The increases in exports have been larger for manufactured good compared to primary products.

While the picture appears promising on the export side, the same cannot be said of imports. Despite the reductions in customs duties for industrial raw material and capital goods, the structure of imports remained unchanged in the face of increased imports. This suggests that liberalization in the import regime has promoted imports of consumer/unproductive goods rather than those meant for industrial growth. Equally disturbing is the fact the elasticity of import demand with respect to GDP for the period under analysis is estimated to be greater than unity (1.26), suggesting that the trade deficit is likely to get larger with income growth.

What might then be the most logical conclusion regarding the effects of external policy reform? External reforms had the effects of expanding exports, but that the growth in exports has not been able to cope up with increases in imports. Whether this can be corrected solely through domestic and trade policy reforms in Nepal--without taking into consideration the economic performances of its trading partner--is yet to be seen.

#### Impact on Financial Sector

The reform in the financial sector has been Nepal's most visible foray into economic liberalization. As was pointed out earlier, a combined total of nearly 20 commercial banks and finance companies entered the market in the 1990's. This has had a number of direct effects: customer service at banking institutions has improved considerably; the share of private to total deposits had risen to 30 percent by FY 1993/94; and, competition among financial institutions lowered interest costs to

borrowers. The average nominal lending rates in the past two years fell from 21 percent in FY 1992/93 to 15 percent in FY 1994/95. However, there may be other factors besides increased competition that has led to the decline, and statistical analysis to examine this has yet to be carried out.

The impacts of reform are very visible in the capital market (Tuladhar, 1995). The primary market grew substantially in FY 1993/94 compared to the previous year: the volume of public issues more than quadrupled from Rs. 53 million to Rs. 243 million, and the performance in this one year alone was equivalent to the total amount of issues over the 13 year period governed by the Securities and Exchange Center (Rs. 246 million). Similarly, the number of new shareholders in the past one year (132,666) was more than double the total shareholders in the past 13 years (53,582). There have been 28 public issues since FY 1992/93, and in every case but one, the shares were oversubscribed. The average oversubscription between mid 1993 and January 1995 was more than five-folds, with the figure as high as twenty folds in some cases.

Since opening of the trading floor at the Nepal Stock Exchange, secondary market activities have also increased. Whereas total turnover since the establishment of the Securities and Exchange Center till the beginning of 1994 was Rs. 248 million, turnover during the one-year period was Rs. 700 million. Similarly, the average number of transactions has gone from 5 per day to about 90 per day. Paid up capitalization has almost doubled, while market capitalization has nearly tripled.

Who are the investors in the stock market? A report prepared for the IRIS Center, based on a sample of 53 investors, points out that 60.4 percent of the investors had monthly incomes of less than Rs. 10,000, 75.0 percent owned one house, 64.0 percent did not own a car, 80.0 percent owned no more than one motorcycle or scooter, and 47.0 percent owned less than one ropani of land (Rajbhandari, 1994). The report then suggests that if we define individuals in middle-income class as those who have monthly income between Rs. 5,000 and 10,000, owns one house, one vehicle, and less than one ropani of land, then on the basis of these criteria, we can conclude that most investors belong to the middle income group or lower. This conclusion, however, should be viewed circumspectly because of the small sample size considered as well as the generous definition of middle income in a country where per capita income is less than Rs. 10,000 annually.

#### Impact on Industry

Data available from the Ministry of Industry indicates that the pursuit of liberal market policies has led to a changing pattern of emerging industries (Policy Analysis Wing, 1994c). Three new sub-sectors emerged in this regard during the last few years: construction, finance, and community services. A total of 3,030 units were registered between July 1991 and May 1994. The total registration in FY 1991/92 (1,649) and FY 1992/93 (1,253) was more than double the total registered in FYs 1989/90 (951) and 1990/91 (867).

Since the initiation and implementation of a more liberalized policy, a total of 473 units

have commenced production'.<sup>6</sup> These units have provided direct employment to 75,148 people and have invested over Rs. 26,319.7 million in fixed assets.<sup>7</sup> Of the total (473) units in operation, 83.5 percent (395 units) are manufacturing industries, 10.2 percent (48 units) are service related industries, 5.3 percent (25 units) are tourism related industry, and 1.1 percent (5 units) are in agriculture.

However, because of the paucity of data regarding the number of units that have closed during the same period, realistic impact of the new industrial policies cannot be judged accurately. Though the average manufacturing index grew by 6.7 percent during the last two years compared to virtual stagnation in the late 1980's, it is difficult to ascertain whether this increase is the result of reform initiatives or dominated by other factors.

There seems to be a gradual shift from cottage and small scale operations to medium scale operations in the last few years. Of the total units that have come into operation, medium scale operations account for 47.8 percent, small scale 32.9 percent, and large scale 19.2 percent; small and cottage scale accounted for 94.6 percent and medium scale 3.1 percent in 1986/87.<sup>8</sup> Medium scale operational units are currently providing over 50 percent of total employment, followed by large scale at 26.3 percent, and small scale at 22.9 percent.

How successful has the Government's liberal policy been in attracting foreign investments? 153 units (62 percent of the total since 1975) have been registered after the promulgation of the new Industrial Enterprises Act in March 1992. Of the total approved foreign investment, 129 units are in operation, 23 are in various stages of construction, and 2 have closed down. The manufacturing sector accounts for 61 percent of total foreign investment, followed by tourism (18 percent), services (14 percent), and energy based (5 percent).

The growth in domestic airline traffic during the last three years has been one of the more visible elements of Nepal's industrial policy reform program. A report prepared for the IRIS Center (Policy Analysis Wind, 1994b) looked into the implications of the open sky policy in the domestic sector. The report points out that by the end of the second year, total domestic passengers nearly doubled from 215,957 in 1991 to 415,878 in 1993. In the eighties, when the Royal Nepal Airlines Corporation (RNAC) was the sole domestic carrier, the annual growth rate in domestic passengers was 6.2 percent. Similarly, the domestic air cargo shipment almost quadrupled during the same period. In the four years prior to 1991, domestic air cargo transportation had fallen at an average annual rate of about 10 percent. Besides the expansion in domestic traffic, there have been other benefits of the open sky policy: RNAC's notorious service and scheduling have improved, and the new policy has allowed some flexibility in pricing. In two years, RNAC's domestic market share dropped to 36

<sup>6</sup> Many firms do not immediately report production commencement to the Department of Industry unless there is a need for concessional tariffs on raw materials.

<sup>7</sup> Both these data are based on information provided by firms during registration and are not verified ex-post by the Department of Industry.

percent while those for Nicon Air (30 percent), Nepal Airways (15 percent), and Everest Air (14 percent) rose. The introduction of private airlines has also meant increases in employment. Initial estimates indicate that direct employment generated by the three major airlines, Nicon Air, Nepal Airways, and Everest Air, was 180 in 1993. Estimates of indirect employment are harder to gauge. While tourism related employment may have received a boost from expanded air service, increases in cargo shipment may have cost portage jobs.

### Impact of Privatization

A lot has been said about Nepal's privatization program. It is the subject of much controversy, and is perhaps the least understood aspect of economic liberalization in Nepal. But what are the realities concerning the economic impact of the privatization program? A recent study prepared for the Economic Liberalization Project provides a thorough investigation of the economic impacts of Nepal's privatization program (Swanson, 1994). The summary of the findings are highlighted below.

Swanson's report is careful to point out that although results of the privatization program are difficult to measure so soon after sales, many changes have occurred in both qualitative and quantitative terms. At the enterprise level, the report points out that most of the new investors made changes in top level management and the board of directors. This was especially true for Bhrikuti Paper, Leatherage Banshari<sup>1</sup>, and Nepal Bitumen & Barrel. Similarly, changes in marketing strategy were adopted by most firms. Several enterprises are expanding into foreign markets, specializing their product line, and in some cases recapturing market share from domestic competitors lost during a slowdown in production at the time of privatization. Changes are also underway in inputs, technology, and training for virtually all of the privatized firms. At Bhrikuti Paper, for instance, a massive expansion program investing nearly Rs. 200 million on a new paper plant is underway. Training opportunities for the workers, on the other hand, have been limited. Bhrikuti Paper, Harisiddhi Brick, Nepal Film, and Balaju Textile are the only firms that have provided such opportunities.

The privatized enterprises are making new investments and increasing their net worth. Bhrikuti Paper and Harisiddhi Brick in particular are undertaking large scale expansion programs. Investments by these two firms alone in FY 1993/94 is almost 50 percent higher than cumulative investment by Government in all of the privatized enterprises through FY 1992/93. Viewed alternatively, investment by privatized firms is equivalent to almost 5 percent of the total estimated increase in investment over the past year. The net worth of privatized firms is 45 percent higher than prior to privatization. And, the weighted production index for firms privatized in the first phase shows an increase of about 28 percent after FY 1991/92.

At the macro level also, there are encouraging signs. Previous loss making enterprises have been transferred into private hands and the Government is no longer responsible for their liabilities. Moreover, the Government received proceeds from the sale worth

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<sup>1</sup> Previously known as Banshari Leather and Shoes

Rs. 700 million, without giving up in all cases land and buildings. And, in all cases, the Government received more than the liquidation value or the expected cash flow value. The Government also is benefitting from tax revenues. Some of the firms are paying significant levels of sales tax for the first time ever. Among such firms are Bhikuti Paper, Harisiddhi Brick, and Leatherage Baushan. Data on sales taxes paid are not available yet for the other privatized firms, as the handover was too recent.

New employment opportunities are also being created. Swanson's report points out that there is less direct employment and more new job creation outside the firm as a result of privatization. He estimates that the balance favors about 500 new jobs: 300 net voluntary redundancies and 800 indirect employment creation in supply of raw materials, transportation, and construction. Expansion programs are expected to take time but will create net direct opportunities as well. Bhikuti paper and Harisiddhi Brick together expect to create 1,000 new direct employment positions by the end of 1996. This would represent a 58 percent increase in direct employment of privatized firms as compared to the pre-privatization period. The indirect employment opportunities created for suppliers of raw material inputs are expected to rise from 1,500 to 30,000.

But this does not suggest that all workers are better off because of the privatization process. Based on interviews and data from company studies, the report concludes that workers in most of the privatized companies are not yet better off financially although more than half expect to be eventually. Few expect to be worse off. "Regularization" of temporary workers hired previously by public enterprises, losses of benefits like housing and transportation allowances, and eroding real wages based on high inflation rates in recent years were cited as the major concerns. Available data show eroding real wages in several firms between 1990-94 irrespective of the date of privatization.

One of the concerns relating to privatization has been price increases. But, the report points out that the consumer price effects resulting from privatization are likely to be minimal as none of the privatized firms are in a position of price setting. All are price takers in a competitive environment, although competition is limited for bitumen emulsion. And, even though there was some increase in the price of Harisiddhi bricks, the absence of a waiting period (up to one year previously) suggests that the real cost of building construction may be lower.

#### IV. What Next on Economic Reform ?

Nepal's economic reform agenda has progressed considerably in the last four years. However, a lot remains to be done for the economy to be truly private sector friendly. Let us now go briefly through some of the more important reform measures that the present Government might consider pursuing within the next one to two years.

##### Fiscal Austerity

The first and foremost task for this Government is to continue on a path of fiscal

austerity. Increases in public outlays that outstrip the growth in revenues widens overall budget deficits, leading to enhanced domestic bank financing, rising domestic prices, deterioration in the balance of payments position, and crowding out private investments. At the time of this writing, the Government is confronted with a budget surplus because of massive revenue mobilization as well as delay in the execution of development programs. But whether the surplus can be sustained is an altogether different question. Irrespective, the Government should concentrate on strengthening domestic resource mobilization, curtailing the growth of regular expenditures, and bringing the size of the overall budget in line with resource availabilities and implementing capacities. This is especially important for this new Government given its political commitment to populist programs, including food subsidies, land reforms, and employment generation. Conditionalities established in the ESAF arrangement, including adoption of new revenue mobilization sources, prioritization of development projects, and a three-year rolling expenditure plans would help guide the economy in the right direction.

### Tax System

Nepal's tax reform program has come a long ways from where it stood 3 years ago. Many new initiatives were taken to modernize the tax system. Conceptually, the Eighth Amendment to the Income Tax Act was designed to align the tax codes closer to international standards. Unfortunately, the tax administration's implementation capacity and abusive use of discretionary authority overshadowed the conceptual good sought through the legislation. The current Government has established a Tax Review Task Force to look into some of these issues, especially those concerning self-assessment. It is expected that they will come out with a long range program of reform by May 30. But important again is the fact that their recommendations not be knee-jerk reactions. Conceptual consistency from a longer run perspective and recognition of the importance of newly emerging sectors and activities have to be kept in mind in designing tax policies.

It does not take a genius to figure out where Nepal's tax reform efforts should concentrate. There have been substantial in-depth studies on this subject matter over the years (International Monetary Fund, 1992a; Baagchi, 1994; Policy Analysis Wing, 1994d), and most recommendations are basically the same: establish clarity in the objectives of the various taxes and use each tax for that specific purpose only; lower reliance on import tariffs for revenue purposes and expand the tax base; introduce the non-distortionary and self-policing Value Added Tax (VAT); modify the income tax act to ensure easy implementation; make tax codes, rules, and regulations transparent; and improve tax administration, especially at customs. There have also been calls to eliminate the octroi, modify the wealth tax, and introduce an agricultural income tax (IMF, 1992a; Khanal, 1991). But, perhaps, as important as what needs to be done is how soon it can be done: our neighboring countries have already embarked on a comprehensive path of tax reform, and if Nepal is to lag behind their efforts, Nepali businesses might see their competitive edge erode very fast (International Herald Tribune, 1995).

## Trade and External Policy

There are two issues at stake concerning trade policy reform: one concerns convertibility in the capital account, while the other relates to tariff structure. The issue of capital account convertibility for a small country like Nepal has been hotly debated both locally and in textbooks. The concerns most often cited relate to capital flight and unpreparedness of financial markets. While there is some merit in both these arguments, the Government needs to be careful that such logic is not promoted by those whose seek protection for the financial sector. Similarly, there have also been contentious debates locally on whether or not to free float the Nepali Rupee against the Indian currency. Here, the anxieties relate to Indian domination of Nepali economic policies as well as the fear of devaluation of the Nepali currency and the resulting acceleration in inflation. Before any decision is taken on this, a more detailed study to understand the Nepal-India trade balance is essential. The present balance of payments statistics published by the Nepal Rastra Bank is considered inadequate by many analysts. Numerous anomalies exist: how is it that Nepal runs a massive trade deficit with India and yet is faced with a parallel market rate (Rs. 1.55) that is lower than the official exchange rate (Rs. 1.60); does the recorded trade account provide accurate indications of the transactions between the two countries; what does the large inflow of miscellaneous capital represent? These and other issues would have to be more clearly understood before floating the Nepali currency vis-a-vis the Indian Rupee. As an interim measure, however, a managed float might be pursued to test the market as well as limit the risks of currency fluctuations.

Customs valuation and tariff rates is the other issue that has to be addressed in the context of trade policy reform. The present Government has expressed its desires to protect domestic industries. While some degree of protection is globally acceptable, such protection has to be granted within a framework that ensures conceptual consistency. Too often in the past, Governments have provided knee-jerk reactions to industry and business complaints in protecting one industry or the other without considering the consequences for all concerned. This may have already happened in the last budget presented by this Government with regards the textile industry. Conceptual clarity as well as the defined goals and the targets on the extent of across the board protection need to be established before tinkering with individual tariff rates.

Associated with trade policy reform, and a topic that has seen considerable discussion locally during the past one year, is the question of Nepal joining the World Trade Organization (WTO). Nepal was mostly an idle bystander during the Uruguay Round of GATT negotiations (Dixit, 1994). This does not, however, imply that the country will remain untouched by the ensuing changes in the global trading system. Nepali garment manufacturers, for instance, will have to learn to survive in a more competitive textile and clothing market. Similarly, the opportunities for trade expansion will also increase, especially given the drastic cuts in industrial country imports tariffs of tropical and natural based products. It is up to the Nepali Government and businesses to start preparatory work to see how best they can benefit from the new world trading order.

## Financial Sector

The developments in the financial sector in the last few years has helped mobilize savings and promote private sector investments. Yet, there are a number of areas that have to be looked into carefully. The large spread between deposit and lending rates is a matter of continuing concern. Many hypothesize that this spread reflects the inefficiencies of state-run commercial banks which account for 70 percent of total banking transactions. To this extent, privatization proceedings on the Rastra Banijya Bank and the Nepal Bank should be accelerated.

Similarly, while liberalization in entry requirements is welcome, the regulator's monitoring and supervisory capacity of the Nepal Rastra Bank should be strengthened. At present, there are many who believe that the central bank does not have the institutional capacity to cope with the growth in the banking sector (Rmyaszewski, 1994). This suggests that the central bank will have to do some deep soul searching and decide whether it wants to focus on being the country's monetary authority and concentrate on supervision and monitoring of financial institutions, or continue to participate as an investor in business ventures like insurance companies, financial intermediaries, stock exchanges, research institutions, and the like. While investment and promotion activities may have been appropriate during times when the private financial market was weak and emerging, such need not be the case now in a open liberalized environment.

Another area of financial sector reform that should be scrutinized is the non banking capital market. The burst of new activities has left the authorities ill-prepared to cope with the situation (Lipson, 1994). Lack of experience and inadequate information on the part of corporate management, bankers, debt and equity issuers, financial intermediaries, regulators, and government officials have led to a distorted capital market. Availability of, and access to, information on publicly traded companies is seriously lacking, while issuers are often negligent or even evade compliance with reporting requirements. In certain cases, the true identity or background of the promoters and sponsors is not fully disclosed. Some companies traded on the stock exchange had not filed financial statements for the past two or three years, and often statements are unaudited or completely unreliable. The investing public is thus left with little more than rumors and speculation with which to make investment decisions.

Institution and capacity building should, therefore, be considered for the Security Exchange Board of Nepal (SEBON). At present, Nepal does not have a comprehensive securities and exchange act that addresses disclosure obligations, due diligence, takeover and mergers, and operation of debt instruments. Mutual funds and debentures are being promoted without the proper regulatory framework to protect investors. Similarly, the Nepal Stock Exchange has come under a lot of criticisms for not enforcing stricter disclosure guidelines on listed firms as well as imposing more stringent surveillance codes on broker and market maker activities. The Harshad Mehta scandal in India and the Barings episode in Singapore provide indications as to how investors can be taken for a ride. Such occurrences in a newly emerging capital market like Nepal's can be expensive both in terms of investor confidence and exchequer bail-out costs.

Finally, the mandate of the various regulators and institutions in the financial market should be more clearly demarcated. Is it, for instance, appropriate for the Nepal Rastra Bank to provide representation to the Board of Directors of the two state-owned banks? How might private banks view this? Similarly, how judicious is it for members of the Securities Exchange Board or the Nepal Stock Exchange to be appointed to the Board of Directors of a financial intermediary? How about NIDC ownership of the Nepal Stock Exchange? The NIDC Capital Markets Ltd--what is it: a market maker, a fund manager, or a trading center? Could there be conflicts of interest in who they might be representing? And, the Company Registrar's Office--is it meant for registration or regulation of businesses?

### Industrial Policy

On the industrial policy front, two issues stand out: facilitating policy implementation and reviewing incentive provisions in the current industrial enterprise legislation. On the face of it, the industrial policy that was promulgated in 1992 is generally pro-business. But ask any entrepreneur about the ease of starting new business, and you will be told a litany of problems--one window, perhaps, but many doors to go through (Dhungel, 1994). Most of the complaints relate to transparency in procedures, discretionary authority of officials, and inconsistency in interpretation. All these have to be improved, and simplifying the industry registration procedures would greatly help. An effective institutional mechanism needs to be established where businesses can go for redressal and solutions to their problems.

Certain provisions in the Industrial Acts have to be reviewed. Foreign investors have expressed concerns about the minimum investment requirement of Rs. 20 million. This, they argue, stifles entry for smaller businesses, especially in the services sector. Similarly, the procedures for receiving approval from the Investment Promotion Board are considered torturous. Suggestions have been made that Nepal establish a system like that in Sri Lanka where the emphasis is on a negative list for foreign investments; those not on the negative list have to be registered but not approved. What businesses may find unpalatable but is an issue that should be looked into are tax incentives granted in the current Industrial Enterprise Act: the wide array of exemptions given to new businesses has to be reviewed. Empirical studies throughout the world indicate that tax incentives seldom promote business establishment; they are merely a means of distorting inter-industry resource allocation. The findings also suggest that facilitation in infrastructure, raw material, and credit are more important than tax breaks.

### Legal Agenda

The drive to modify and modernize legislation that impact economic decision-making has to be pushed harder. The revision to Company Law is essential not only to eliminate contradictions and conflicts between company authority and secondary market dealings at the Nepal Stock Exchange, but also to facilitate internal governance in companies. Similarly, Contract Law has to be amended quickly to promote foreign

investments. Investors may hesitate to enter the market unless such legislation includes provisions for breach of contract, compensation, and redressal, among others. In addition, there are many other legislation that need to be promoted to instill business confidence: Nepal's exit policies and labor laws are archaic and not conducive to the establishment of business; anti-trust legislation should be enacted to monitor unchecked use of monopoly power; consumer protection legislation needs to be promulgated to safeguard consumers from fraud and deception; legislation to govern the issuance and operation of debt instruments has to be introduced to protect investors; and, the existing Foreign Exchange Regulation Act is an anachronism that has to be amended if foreign institutional investment in the stock exchange is to be considered.

## V. Conclusion

This paper had three basic objectives: to review past policy reform efforts; to assess the economic implications of the reforms; and to suggest a future course of action.

In its review of past reform efforts, the paper points out that the extent of economic liberalization in Nepal in the past three years has been substantial. Particularly impressive are the reforms in the trade and external policy area. The expansion in exports and the burgeoning of international reserves in recent years are testament to the success of the reform programs. Disturbing, however, are the deterioration in the trade balance and the absence of a shift in import structure in favor of industrial raw materials and capital goods. Policy measures that would assist in export diversification should be examined; otherwise, it will be difficult for Nepal to sustain the process of import liberalization. The country should also be prepared to adopt full convertibility in the capital account; it cannot remain unguarded should India decide to make the move.

Tax policy reform in Nepal is replete with contradictions. On the one hand, the reform efforts have led to massive revenue mobilization; conversely, no one issue evokes as much grief as tax policy. Allegations of administrative inefficiency and abuse of authority is often voiced. As such, the entire tax system has to be modernized. Ambiguity in rules and regulations should be minimized and a system of rewards and punishment has to be instituted in tax administration. The paper argues that over the long run, if the country is to reduce its reliance on foreign assistance and pay for the social sector programs itself, there is little choice but to move to the non-distortionary Value Added Tax (VAT). The sooner this is done the better it is for revenue mobilization.

Considerable pro-market changes have been made in industrial policy with the introduction of the Industrial Enterprise Act and the one-window policy. The achievements are manifested in the number of new industries that have come into operation in the last three years. Despite this, policy implementation seems to be riddled with many little irritants. The Government should look into these irritants, especially those concerning registration of new businesses. Moreover, with two years of experience, it is time to review the Industrial Enterprise Act. Reducing tax

concessions granted in the Act should be considered: these holidays, arguably, provide little tangible benefits to the country. With regards foreign investments, eliminating the minimum fixed capital requirement of Rs. 20 million and abolishing the licensing procedures for all but a few select negative list of industries should be pursued.

Nepal's privatization program has run smoothly so far. Studies indicate that privatized firms are performing considerably better than when in the public domain. Moreover, they also have had positive effects on employment and income generation. All these are encouraging signs. But, the scope of the program to-date has been wide but not deep. The Government now needs to build on this momentum and accelerate the pace of privatization. Empirical evidence from all over the world suggests that, over the long run, publicly managed enterprises are inherently less efficient than those under private management (Sharma, 1995): the concept that PEs can operate efficiently in the public sector is a myth that prevails only among a select few. This has to be guarded against.

The paper also voices concerns regarding the financial market. Banks and financial institutions have mushroomed in the last three years without due consideration to deposit insurance. The future, therefore, could be costly for both investors and the exchequer unless the Nepal Rastra Bank can provide proper monitoring and supervision. This same concern is applicable for the capital market which has had a bullish spurt in the last twelve months: investor protection is an issue of prime concern. Institution and capacity strengthening should be considered for the Securities Exchange Board. Similarly, the Nepal Stock Exchange has to more effectively enforce disclosure requirements, monitor broker and market maker activities, and modernize the trading system. The country is presently ill-equipped to absorb the consequences of collapses in the capital market. The likelihood of such a collapse can be considerably reduced if the mandate of the various regulatory bodies and institutions in the capital market could be more clearly demarcated.

A properly functioning legal system is essential for sustaining the process of economic reform. Unfortunately, very little has been achieved in this regard, both in terms of economic legislation and the judicial system. Two legislation that have a large bearing on economic decision-making--Company Law and Contract Law--have to be amended soon if the process of economic liberalization is to be sustained. Similarly, other legislative reforms, such as anti-trust, exit policy, labor laws, consumer protection, and the foreign exchange regulation act should also be given due consideration.

While the recent reform efforts in Nepal have been impressive, they were not devoid of errors. Transparency has been one of the key stumbling blocks. The Eighth Amendment to the Income Tax Act represents one such example. The business community was never consulted before promulgating the Act. Consequently, vociferous protests ensued, and co-operation from the business community was minimal in its implementation. Similarly, Phase I of the privatization program came under severe criticism for the lack of transparency. The public felt uninformed on the process and procedures used to sell assets that they considered their own. Fortunately, this was corrected in Phase II, and the privatization process became more

acceptable to the public. A second problem that has hounded Nepal economic reform initiatives is the inability of the Government to communicate the merits of reform. Very little was done to educate policymakers and the public on the reasons for and logic of liberalization. A few technocrats residing in Government institutions--dedicated as they may be--cannot sustain the reform process on their own. They represent, what would be termed in mathematical economic parlance, necessary but not sufficient conditions for optimization. Economic reform has to be broad based and publicly communicated for it to attain sustainability.

We now live in a rapidly changing world where the international environment essentially dictates the course of economic policies. Often in Nepal we hear references to the economic policies of a particular party or a regime. Thinking of policy in this perspective is being narrow minded. We should enlarge our horizon and talk about sound national policies to achieve market driven growth. Policymaking is about having a vision and the commitment to carry it through. The present Government has laid out on paper its vision for Nepal. The challenge now is to attain that vision by pursuing economic policies that are fundamentally sound, have been developed in a transparent manner, and are consistent with the global economic environment.

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## Quarterly Field Report: Central Europe

### I. ADMINISTRATIVE DATA

Reporting Period: January 1, 1995 - March 31, 1995

BOA Number: ANE-0015-B-1019-00

Delivery Order Number: 18

AID Project Office: G/EG/EIR (R. Mitchell, 522 SA-2)

AID Office funding delivery order: EUR/RME (Susan Gurley 4733 NS)

AID Office project: Institutional Reform and the Informal Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### I. Project purpose summary statement:

- A. Project Purpose: The purpose of the IRIS-Central Europe<sup>1</sup> (Delivery Order 18) project is to create a positive commercial law institutional framework for the development of the financial sector in Poland and three other countries (Lithuania, Macedonia and Bulgaria). This propose is being accomplished by assisting Poland and Lithuania to reform their collateral and bankruptcy laws, and by similar assistance to begin shortly in Macedonia and Bulgaria.
- B. Relationship to USAID Program Strategy: Poland has been one of the most successful of the C&EE countries in the transition to a market economy. There continues, however, to be a great need to create employment and to expand the private sector, especially the SME sector where most new job creation occurs.

An important constraint to job creation and private sector expansion is the lack of credit. Numerous USAID financed studies and projects, the World Bank and the European Bank for Reconstruction and Development have identified the absence of a modern commercial banking system as one of the principal blocks to further development. Without it, private capital cannot flow into the region for lending to credit-worthy firms. This has not happened because Poland, and indeed each of the countries of C&EE, lacks an effective collateral law which would enable banks to do asset-based lending to new and existing firms. At present, the only effective collateral is cash on deposit at the lender. Banks fear to lend, knowing collection is uncertain and difficult. If an effective collateral law with a central registry to prevent fraud were enacted, commercial lending to the private sector would increase dramatically.

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<sup>1</sup> The IRIS-Poland Project III changed its name to IRIS-Central Europe effective February 1995. The new name better reflects the new regional scope of the Warsaw office and is deemed less likely to arouse political apprehension in countries such as Lithuania, where there have been conflicts with Poland in the past.

The IRIS-Poland II project assisted Poland in drafting a new collateral law, and IRIS-Central Europe is assisting Poland to implement a collateral law. IRIS has encouraged the participation of local legal and banking associations in reforming their societies, leveraged upon other assistance and programs of USAID, the World Bank, and EBRD to the financial sectors, and will lead to sustainable economic development by making bank credit available to new and existing businesses starved for credit. IRIS-Central Europe has begun similar work in Lithuania, and during the quarter made decisions in coordination with USAID-Washington and local USAID offices to begin work in Bulgaria and Macedonia.

C. Highlights of program progress during the reporting period:

1. Bank Collateral Law Reform. The major focus of IRIS-Central Europe continues to be Polish collateral law reform.<sup>2</sup> Since its inception, IRIS has been working with the top legal experts of Poland who form the advisory Commission for Reform of the Civil Code [CRCC], the Polish Ministry of Justice [MOJ], the National Bank of Poland [NBP] and Polish and foreign legal scholars to draft a collateral law which can be presented to the Polish Parliament for enactment. The main accomplishment of IRIS-Central Europe has been to create and support a local **Polish-led** coalition of academic, government, and business leaders interested in collateral law reform.

The first quarter of 1995 was marked by major steps forward in the effort to reform Poland's collateral law. There was much open public discussion of the draft law, the high point of which being the international conference held on 27 February. The quarter ended just as the draft was submitted to the Economic Committee of the Council of Ministers -- the last step before submission to the Polish Parliament.

The first week of January, Deputy Minister of Justice Adam Zieliński invited IRIS Director Dwight to his office. In order to force the Ministry of Finance to face public international scrutiny of its refusal to agree to the elimination of the "secret tax lien,"<sup>3</sup> Deputy

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<sup>2</sup> Collateral law (sometimes called "secured transactions" or the creation of "charges" or "liens") is the legal institution whereby a creditor can take a "collateral interest" in certain goods (often those purchased by means of the loan) of the debtor. In case of default, the creditor is allowed to repossess and sell those goods ahead of other creditors to satisfy the loan.

<sup>3</sup> Under Articles 23, 24, and 49 of the Law on Tax Obligations of 1980, the Polish Ministry of Finance can jump in front of previously registered mortgages and pledges if the debtor has any unpaid tax obligations. This means that, in effect, no collateral given in asset-based lending in Poland is truly secure. In contrast, in the US, the Internal Revenue Service cannot jump in front of a previously registered mortgage. This in part explains the small level of asset-based

Prime Minister Zieliński asked IRIS to organize a major conference at the end of February for open discussion by all sectors of Polish society interested in the proposed collateral law. His opinion was that the Ministry of Finance would be unable to maintain its rigid position against reform in open national and international discussion of this issue. He also asked for assistance in bankruptcy law reform.

On January 4, January 18, and February 15, inter-ministerial meetings were held to discuss the collateral law draft. IRIS collateral law coordinator Dr. Tomas Stawecki represented the Polish MOJ at that ministry's request. There was general support for the reform, although at the first two meetings, mid-level representatives of the Ministry of Finance adamantly refused to consider giving up automatic priority of the tax lien. The draft proposes that the tax liens be registered in the central pledge registry and have priority only if registered before other creditors. Finally, in response to numerous letters sent by IRIS, the World Bank, IMF, and the Poland-US-Europe Joint Action Committee (George Pepper - CEO of Proctor and Gamble - chairman)<sup>4</sup>, at the third international meeting, Vice Minister Modzelewski of the MOF appeared and agreed that the automatic priority of the secret tax lien must be eliminated. He added, however, that the MOF wanted to have its own separate registry to record publicly these liens.

IRIS spent the next seven weeks organizing a large conference for the MOJ, held on 27 February 1995 at the small palace adjacent to IRIS's Warsaw headquarters. Two hundred fifty people attended the conference, which was opened by Deputy Prime Minister and Minister of Justice Cimoszewicz. The conference received prime time evening news coverage, radio coverage and was widely discussed in the print media.<sup>5</sup> The film *How to Make Money on Bankruptcy*, co-produced with Polish television, was premiered at the conference and warmly received. It is not an exaggeration to say that collateral law reform is now a subject of popular discussion in Poland. There is widespread public consensus on the desirability of reforming the Polish pledge law to meet the requirements of modern business. Following the conference, technical changes were made in the draft and on 28 March 1995 it was submitted to the Economic and Social Committee of the Council of Ministers by the MOJ.

It should be noted that immediately after the collateral law

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lending in Poland except when the collateral is foreign currency cash in the lending bank.

<sup>4</sup> IRIS drafted all these letters for these institutions. See Attachment IV.

<sup>5</sup> See Attachment X.

conference, there was a major change in the coalition government. There is a new Minister of Justice, Jerzy Jaskernia, former chief of the Economic Committee of the Sejm. IRIS has been working closely with him for two years. The former minister, Cimoszewicz, is now Vice-Marshall of the Sejm, and ready to ensure sympathetic consideration of the collateral law draft when it is submitted there.

Central Registry. The organization of a central pledge registry is a key portion of collateral law reform. During the quarter, this aspect of the reform stalled owing to the desire of the World Bank to take over complete control of the organization of the Central Registries Project (CORS) from the Norway Group S.A. Serious problems of coordination of World Bank conditionality directives with USAID programs occurred. The situation was resolved on 3 April 1995 when the Poles signed an agreement with the Norwegians to proceed as they had originally planned with a pre-study. The World Bank is doing a study to reconfirm the conclusion of IRIS and the Polish MOJ that Norway has the best integrated system of central registries in the world and recently appointed Peter Kyle, Esq., of the General Counsel's Office to work with IRIS and USAID in coordinating the Central Registry loan.

Lithuania. After receiving an invitation from the Lithuanian Minister of Justice, the IRIS Lithuania Collateral Law Project commenced in January 1995. John Corrigan, who had served as CEELI Commercial Law Liaison in Vilnius from August 1993 to January 1995, assumed the role of Director of the Project. During the subsequent several weeks, Mr. Corrigan organized a small office, retained a translator/facilitator well versed in debtor-creditor law terminology, and generally started up operations. He met several times with Stasys Velyvis, local expert retained by IRIS to work on the project and Jadvyga Aleksaite, Chief of the Private Law Department at the Ministry of Justice, who is responsible for developing a mortgage registry law and a secured transactions system. Corrigan, Velyvis and Aleksaite have identified potential "Working Committee" members as well as impediments to the passage of the law covering transactions secured by movable property.

By early March, the Working Committee had been established and had begun work. IRIS-Lithuania provided committee members with fully translated materials as well as a general work plan that members can use as a guide. At least as importantly, IRIS-Lithuania conducted periodic "primer" sessions designed to familiarize the members with important concepts and to forewarn them of problems they might

encounter. Corrigan, Velyvis and Aleksaite also attended the IRIS sponsored Conference on the Polish Draft Collateral Law in Warsaw (27 February). At this time Director Corrigan took the opportunity to meet with Mancur Olson and Dennis Wood of the IRIS Center and Ronald Dwight, IRIS-Central Europe Director. By late March, after the Committee had identified several impediments to the passage of a workable secured transaction statute, IRIS-Lithuania researched and drafted an opinion letter to the Minister of Justice regarding the propriety of maintaining separate laws governing movable and immovable collateral, and also provided informal, "off the record" commentary regarding a draft "Law on Mortgage Offices" and its impact upon the secured transaction system contemplated by the Work Committee.

Starting in March, IRIS-Lithuania began to play a catalyzing role with regard to inter-donor and inter-governmental coordination of activities in the area of secured transaction law development.

*Bulgaria.* Director Dwight made a trip to Bulgaria from 30 January to 2 February and made a decision in consultation with USAID-Sofia and USAID-Washington to begin a collateral law project there, owing to the new political situation. The socialist party (former communists) now have a majority in Parliament and wish to reform their pledge law. Five persons, who will form the nucleus of collateral law reform in Bulgaria, attended the 27 February conference. IRIS is reviewing candidates for the LTA advisor position in Sofia. Mark Beesley, former CEELI representative in Sofia, has been hired by IRIS-Central Europe and will spend a substantial portion of his time helping to set up the program in Bulgaria.

*Macedonia.* After the collateral law conference, a joint decision was made to go ahead with collateral law reform in Macedonia. Candidates for the LTA position in Skopje were being interviewed at the end of the quarter. A letter to the Macedonian Minister of Justice has been drafted.

2. *Bankruptcy Reform.* IRIS has been working with Deloitte and Touche's Warsaw office in planning a bankruptcy conference in conjunction with the Ministry of Justice on 26 April 1995. IRIS is supporting the work of IRIS consultant Prof. Feliks Zedler, chosen by the Polish MOJ as principal draftsman of the new proposed bankruptcy code.

3. *Intellectual Property Reform.*

*Internet.* IRIS has been urging NASK, the Polish Internet

system. to provide more service to commercial users in order to reduce the cost of Polish government subsidies of the system. In April, NASK formally announced this as a formal policy initiative. Former Minister of Science, Dr. Witold Karczewski, has agreed to become an IRIS consultant and work on these issues. IRIS consultant Adam Wasilewski was hired as a consultant by USAID-Warsaw to do a study on how to connect all USAID contractors in Poland to the Internet.

Model Contract Project. IRIS-Central Europe signed a contract with the Institute for the Protection of Intellectual Property at the Jagiellonian University to complete the Polish half of the Model Contracts book. The English half was republished by the Polish State Committee for Scientific Research (equivalent of the Polish Ministry of Science) on March 15.

Television Programs. Both films, co-produced with Polish Television, one on collateral law reform and the second on intellectual property issues, were completed, edited and approved during the quarter. The intellectual property film, *SUPEZ* was shown at a premiere to seventy-five persons from USAID and the scientific community on March 17, 1995. Nationwide emission, with an expected audience of four million, is scheduled for 10:10 pm on April 25. The collateral law film *How to Make Money on Bankruptcy* was premiered at the collateral law conference on February 27 and is expected to be shown in May. Both films are having English subtitles added so that they can be shown in other countries.

2. Progress report

A. Technical Implementation

Activities Planned for Reporting Quarter	Current Status	Explanations
Cooperation with PADCO (Planning and Development Collaborative, International), a USAID-funded housing finance program.	2	Ronald Dwight met with Ronald Campbell (January 4), S. Rogers and M. Heckart (January 10), with Ronald Campbell and Peter Rabley (March 23).

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Activities Planned for Reporting Quarter	Current Status	Explanations
Collateral Law project.	2	Ronald Dwight met with Deputy Ministry of Justice Adam Zieliński (January 5, Feb 23) IRIS consultant Tomasz Stawecki took part in inter-ministerial meetings to discuss collateral law project. The draft was corrected and sent to the Council of Ministers (March 28).
Cooperation with Ministry of Finance.	2	Ronald Dwight met with Elzbieta Piechocka, advisor at the Political Division of the Ministry of Finance (January 6 & 12); Ronald Dwight and Mancur Olson met with Deputy Minister of Finance Ryszard Michalski (March 1).
Central Registry Project.	2	Ronald Dwight and John Olaisen from The Norway Group held a series of meetings with George Dembiński, the IRIS consultant for the Central Registry Project (January 10), Tomasz Stawecki and Judge Henryk Walczewski (January 11), Paul Knotter of the World Bank (January 11), Deputy Minister of Justice Adam Zieliński (January 12), experts from the World Bank (January 18), Minister Zdziennicki and Dr. Kielbowicz, advisor at the Ministry of Finance (March 30).

Activities Planned for Reporting Quarter	Current Status	Explanations
Briefing and liaison with USAID/Poland.	2	Conference on collateral law at USAID (January 13). <sup>6</sup> Meeting with Small Business Advisor Laura Lindskog (January 20) and with Alexandra Braginski and Laura Lindskog (February 8), Private Sector Networking Meeting (February 23, March 30); meetings with Peter Amato, Pat Shapiro, and Susan Gurley (February 28); and Artur Wielkoszewski (March 10). Ongoing participation with Laura Lindskog and Don Pressley on USAID Legal Matrix. <sup>7</sup>
Coordination with the World Bank.	2	Ronald Dwight met World Bank Mission (January 16) and Peter Kyle (March 6), Margaret Phalwitz (March 10), and Jaime Vasquez (March 16).
Bankruptcy Project.	2	Ronald Dwight met with Richard Coates from Hungary at Deloitte and Touche (January 18). Ronald Dwight organized the meeting of Richard Coates and Mr. Paga (managing partner of Deloitte and Touche, Poland) with Deputy Minister of Justice Adam Zieliński.
Cooperation with Ministry of Justice.	2	Ronald Dwight met with Włodzimierz Rymś, Director of the Legal Department at the Ministry of Justice. (January 19 & 23)

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<sup>6</sup> See Attachment I.

<sup>7</sup> See Attachment II.

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Activities Planned for Reporting Quarter	Current Status	Explanations
Publishing of the American Model Contracts for Technology Commercialization Projects (book version).	1	The second step of CETE, IRIS and KBN joint project was completed in February.
Collateral Law Survey.	2	William Rich (IRIS project coordinator) traveled to Romania (February 15-19) to meet local experts in Bucharest and Cluj-Napoca; to Slovenia (February 22-26) to meet experts in Ljubljana; to Croatia (March 30 - April 2 ) to meet local and international experts in Zagreb. Draft collateral law survey was presented to Jan Henryk Rover (EBRD). Ronald Dwight discussed follow-up questionnaires with experts in Sofia and Zagreb (January 30 - February 2). William Rich presented draft to Pat Shapiro, Susan Gurley, and Clara Lipson (USAID) in Warsaw (February 28). William Rich met with Georgetown Lae professor John Spanogle in Warsaw (March 1). Draft report completely revised before Zagreb conference.
Expansion of Program to Bulgaria.	2	Ronald Dwight met with Mark Beesley in Bulgaria (January 30 - February 1) and in Warsaw (February 28)

Activities Planned for Reporting Quarter	Current Status	Explanations
Collateral Law - Public Relations.	1	Ronald Dwight was interviewed by David Osterhout from the <i>Central European Business Weekly</i> (February 6) <sup>8</sup> . Ronald Dwight met with Mr. Kirkland from <i>Warsaw Business Journal</i> (March 1). William Rich was interviewed by John Guzowski of <i>Capital Business Weekly</i> (March 28).
Cooperation with Adam Smith Center.	1	Ronald Dwight met with A. Sadowski from Adam Smith Center (February 14).
Cooperation with the British Chamber of Commerce.	2	Breakfast meetings (February 23)
Cooperation with Center for Strategic & International Studies (CSIS).	2	Pursuant to activities of CSIS Business Action Group meeting in Kraków (December 1994), William Rich maintained steady contact with the group and drafted letters to Minister of Justice Cimoszewicz and Minister of Finance Kołodko, which were signed by group co-chairmen (January 26). <sup>9</sup>
Roundtable on Commodity Exchange.	1	USAID (February 23).
Collateral Law Conference.	1	The Ministry of Justice and IRIS organized a one-day international conference to discuss the Polish Draft Collateral Law, attended by 250 people (February 27). <sup>10</sup>

<sup>8</sup> See Attachment III.

<sup>9</sup> See Attachment IV.

<sup>10</sup> See Attachment V.

Activities Planned for Reporting Quarter	Current Status	Explanations
Mancur's Olson lecture.	1	The Adam Smith Center and IRIS organized a book party to promote the Polish edition of IRIS Chair Mancur Olson's book <i>The Rise and Decline of Nations</i> . Olson gave a lecture "Contract Law, Capital Accumulation, and Economic Development" (February 28).
Expansion of Program to Lithuania	2	New IRIS long-term advisor John Corrigan arrived in Vilnius. Meeting with John Corrigan in Warsaw (February 28)
Expansion of Program	2	IRIS Staff met with Olson and IRIS Director of Field Programs Dennis Wood to discuss the future of the program. renamed IRIS Central Europe (March 1).
Public Relations activities	2	Ronald Dwight and Justyna Misiurewicz (IRIS project coordinator) were the guests of journalist Elżbieta Uzdańska at <i>Radio dla Ciebie</i> to talk about TV programs cosponsored by IRIS and about doing business in Poland (March 10 & 29).
Educational films about collateral law and intellectual property (technology commercialization).	1	The collateral law film ( <i>How to Earn Money on Bankruptcy</i> ) premiered during the Collateral Law conference (February 27). The film on intellectual property ( <i>Supez</i> ) was presented to eighty guests at the cinema "Rejs" (March 17). <sup>11</sup>

<sup>11</sup> See Attachments VII and VIII.

Activities Planned for Reporting Quarter	Current Status	Explanations
Press conference at Business Center Club.	1	Artur Nowicki, IRIS legal consultant, made a presentation on secret tax liens and the current status of collateral law (March 20). (Reported in <i>Rzeczpospolita</i> , March 21.) <sup>12</sup>
Preparation of the Polish model contracts for technology commercialization Projects.	2	Prof. Michał du Val and Dr. Wojciech Tabor, Intellectual property experts at Jagiellonian University) proposed an agreement at the meeting with Ronald Dwight and Justyna Misiurewicz (March 27). This agreement was signed in Kraków on March 31. <sup>13</sup>
Conference in Zagreb, Croatia (March 30-31).	1	William Rich, IRIS specialist, participated in the Workshop on Secured Transactions.

- (1) Action completed  
(2) Action in process  
(3) Action delayed  
(4) Action canceled

Major Activities Planned for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Ronald Dwight will present views on legal reform during a visit to Moscow.	4/16	IRIS/Central Europe director.
Ron Dwight will attend the EBRD Annual Meeting in London.	4/11	IRIS/Central Europe director.

<sup>12</sup> See Attachment VI.

<sup>13</sup> See *The IRIS-Poland Project Quarterly Report 13* (Attachment I).

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<p>An educational film about copyright law (<i>Supecz</i>) will be broadcast on Channel 1 at 10:15 p.m. as a part of the series <i>People, Power and Money</i>." A promotion at <i>Radio dla Ciebie</i> will precede.</p> <p>The date of transmission of a second film, on collateral law, is to be determined.</p>	4/25	IRIS/Poland
<p>IRIS will assist Deloitte and Touche in organization of an insolvency conference.</p>	4/26	IRIS/Central Europe
<p>A manual of model contracts for technology commercialization will be completed in the beginning of May. A preprint version will be available immediately. Efforts will be made to have it printed by KBN during this quarter.</p>	5/05	IRIS/Poland
<p>William Rich will provide CSIS with collateral law information for Action Commission's Plenary Session in Berlin (May 19-20).</p>	5/20	IRIS/Central Europe
<p>A long-term advisor for the Collateral Law project in Macedonia will be hired.</p>	6/30	IRIS/UMCP
<p>A long-term advisor for the Collateral Law project in Bulgaria will be hired.</p>	6/30	IRIS/UMCP

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<p>IRIS will continue to assist John Olaisen of the Norway Group in realization of the central registry project. IRIS will work on engaging the Council of Ministries as a head of the project and will possibly organize inter-ministerial workshop under auspices of the Council of Ministries and the World Bank to discuss various aspects of the Central Registry project.</p>		<p>IRIS/Poland</p>
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B. Project Administration

Planned Activities for Reporting Quarter	Current Status	Explanations
Renewing salary structure for inflation and Polish legal requirements.	2	
Call back service to cut long distance phone bills.	1	
LAN training for staff.	2	
Hiring Dennis Zotov as computer consultant.	2	
Hiring Urszula Wiśniewska and Robert Byers as office assistants.	1	

Current Status Key:

- (1) Action completed
- (2) Action in process
- (3) Action delayed
- (4) Action canceled

1/10

Activities Planned for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Hiring of receptionist Agnieszka Woniakowska.	5/1	IRIS Warsaw office
Hiring of regional coordinator Grzegorz Galusek.	4/15	IRIS Warsaw office
Hiring of the financial manager to replace Helena Sinoracka.	5/30	IRIS Warsaw office
Set up office in Bulgaria.	6/1	Mark Beesley, IRIS representative
Set up office in Macedonia.	6/1	IRIS Central Europe
Set up financial system for expanded project.	6/30	IRIS Central Europe/IRIS UMCP
Hiring IRIS-Central Europe vice director.	5/30	IRIS Central Europe

III. FINANCIAL DATA To be supplied.

IV. ATTACHMENTS

Attachment I . . . . Agenda for IRIS Conference on Polish Collateral Law at USAID, Warsaw

Attachment II . . . Letter from Don Pressley, USAID Representative. re USAID Legal Matrix

Attachment III . . . . . Article in *Central European Business Review*, February 1995

Attachment IV . . . Letter to Kolodko signed by co-chairmen of CSIS Business Action Group

Attachment V . . . . . Agenda for International Conference on Polish Collateral Law, 27 February 1995

Attachment VI . . . . . Article in *Rzeczpospolita*, 21 March 1995, about press conference at Business Center Club

Attachment VII . . Invitation to premier of IRIS coproduction *Supez*, starring Ronald Dwight

Attachment VIII . . . . . Letter from Apple Film Production

Attachment IX . . . . . Letter from Ambassador Rey, re NASK.

Attachment X Articles about the 27 February Collateral Law Conference in the Polish Press.

Attachment XI . . . . . "Prawo Na Zamwienie," special supplement to *Gazeta Prawna* NR 11, with complete text of the Draft Law on Registered pledges and the Pledge Registry

# ATTACHMENT I

## United States Agency for International Development Warsaw, Poland

*Meeting on the Polish Ministry of Justice Draft  
of the Proposed Law on Registered Bank Pledges (Collateral Law)*

January 13, 1995

### Agenda

*Welcome, by USAID* *Five Minutes*  
Mark Kraczkiewicz, Deputy Director USAID Warsaw

*Introduction by Peter Amato* *Five Minutes*  
Economic Restructuring Chief

*Short Summary of Collateral Law Problems* *Five Minutes*  
Ronald Dwight, Director - The IRIS-Poland Project

*Presentation of the Polish Draft Law* *Thirty Minutes*  
Dr. Tomasz Stawecki, Lecturer in Law, University of Warsaw School of  
Law; member collateral law drafting team, Commission for the Reform  
of the Civil Code

*Questions and Answers* *One Hour Fifteen Minutes*

***The meeting will adjourn at 12:00***

## ATTACHMENT II



### UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT

ALEJE JEROZOLIMSKIE 56C  
00-803 WARSAW, POLAND

January 25, 1995

Mr. Ronald Dwight  
IRIS  
Ksawerow 13  
02-656 Warsaw

Dear Mr. Dwight: *Ron*

Over the past several months I have been reviewing the progress toward development of the legal matrix document. This effort, in which you took an active part, has resulted in our now having an invaluable reference tool to focus on salient legal reform issues related to enhancing private sector growth in Poland.

It is tremendously rewarding for me to see the personal commitment and teamwork that has resulted from the August implementors' workshop. Your participation confirms my belief that synergy is not only possible but a means to improving the quality and impact of our programs.

I want to take this opportunity to thank you for dedicating so much time apart from your busy schedule to collaborate in this worthwhile effort. Thank you for your contribution and above all, professionalism.

With warmest appreciation and best wishes for 1995,

Sincerely,

Donald L. Pressley  
USAID/Warsaw Representative

Central European  
**PROPERTY REVIEW**

February 1995 • Real Estate News in Central and Eastern Europe • Number 21

p.1,8 col. 1-3  
**Lien laws hamper Polish deals**

by David Osterhout in Warsaw

The lack of an effective collateral law is one of the main obstacles to the development of a modern banking and financial system in Poland, say reformers who are encouraging the government to strengthen its legal system.

Under the present law, property liens provide only scant protection, and lenders cannot be assured they will recover if a borrower defaults on a loan.

The problem is being felt at all levels of society, from the would-be home buyers who cannot get a reasonable mortgage to the industries that need financing for new plants.

"This lack of security is one of the principal reasons why more foreign capital has been invested on one street in former East Berlin than in all of central Europe," said Ronald Dwight, director of the IRIS-Poland Project, an American organisation that is involved in the country's institutional transformation.

Since the fall of Communism, Poland has received about \$4 billion in foreign investment, he noted.

"Poland would need \$10 billion by the year 2000 to raise its living standards to only half that of the poorest country in western Europe," Mr Dwight pointed out. Capital commitment of that magnitude won't be possible with-

out collateral law reform.

Part of the problem is the government itself. While the Justice Ministry supports a draft reform law that has been issued for public comment, mid-level bureaucrats in the Finance Ministry appear reluctant to give up their ability to file "secret" tax liens, a provision that exists in the present collateral law.

Mr Dwight hopes the differences will be worked out at a Justice Ministry conference called to discuss the draft reform law on February 27th in Warsaw.

Funded by the US Agency for International Development, IRIS ("Institutional Reform and the Informal Sector") has been active in Poland's transition process since 1991. The IRIS-Poland Project was created after a USAID delegation visited the country

*please see LIENS, page 8*

and concluded that gaps in the legal framework were hampering the entry of small and medium sized businesses into the market economy.

From its start, IRIS Poland has focused its efforts on the problem of obtaining financing for economic growth.

"Banks are disinclined to lend, even to deserving enterprises, because of the near impossibility of securing loans," Mr Dwight said.

There are several problems with the present law.

A chief impediment is the lack of a central lien registry. Without one, it is impossible to know whether the collateral offered to secure a loan is already committed to another lender.

Further, a banker has no assurance that the borrower will not sell the collateral. And the current Polish Code of Civil Procedure actually gives a recently established claim higher priority over an earlier one.

Under the code, the banks are fifth or sixth in line when the time comes to collect in a bankruptcy proceeding.

Near the front of the line is the Ministry of Finance, which has the power to enforce tax liens that are not publicly recorded. Because creditors can't always find out whether a borrower's taxes have been paid in full, they can never be certain that the tax collector won't arrive at the last moment of a bankruptcy proceeding and seize everything.

As a result, banks are reluctant to provide mortgages unless they are backed by a huge cash deposit. As Mr Dwight pointed out, if someone has enough cash for a big deposit, he generally doesn't need a loan.

The investment that has occurred in Poland, he said, is from large corporations that have the cash or can afford the

risk. "The big corporations have only put their toes in the water here," Mr Dwight said. "With the proper legal conditions, investments could have been in the \$100 billion range."

IRIS-Poland has been working on the collateral law issue with Poland's Commission for Reform of the Civil Code, the National Bank of Poland and the Ministry of Justice.

"The effort received a tremendous boost when Justice Minister Włodzimierz Cimoszewicz put collateral law reform near the top of his agenda," said Mr Dwight.

Last March, members of the CRCC met near Warsaw to review several draft proposals. Among the changes: establishment of a central lien registry and the abolition of secret tax liens by requiring the Finance Ministry to list its claims publicly in the registry.

The draft law was circulated for review by government ministries and the banking and financial communities. Some of the banks have raised objections to a provision that would limit their ability to claim collateral without court action. Mr Dwight is optimistic that those complaints will be dealt with.

He is more concerned about objections raised within the Finance Ministry over the provision for listing tax claims.

"The Tax Department of the ministry is opposed to conceding its long-held privilege," he said. "In the short term, they might be able to collect more taxes. In the long term, they are prohibiting the growth of both domestic and foreign investment."

"At the Feb. 27 conference, they'll have to make their arguments in public."



ATTACHMENT IV

Center for Strategic & International Studies  
Washington, DC

January 26, 1995

The Honorable Grzegorz Kolodko  
Deputy Prime Minister and Minister of Finance  
Ministerstwo Finansow  
ul. Swietokrzyska 12  
00-916 Warsaw

Dear Minister Kolodko:

We understand that the final draft collateral law prepared by the Commission for the Reform of the Civil Code has been officially delivered to your ministry for inter-ministerial review. The members of the Business Working Group of the CSIS U.S.-Europe-Poland Action Commission, an international commission of business leaders, scholars, and government officials which we co-chair under the leadership of Zbigniew Brzezinski, have reviewed this draft law and endorsed it during the December 16 meeting of the working group in Krakow.

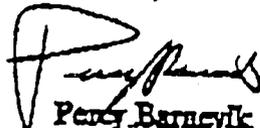
Of particular significance in the new law is the abolishment of secret tax liens. This prerogative of the tax department, allowing them to place a lien on a piece of property without publicly recording it is very destabilizing to the business environment. Creditors cannot reliably secure loans because there is the fear that the tax department will arrive near the close of a bankruptcy proceeding and seize the collateral. Nor can investors buy property with any certainty that the transaction will not later be invalidated or complicated because of unpaid taxes.

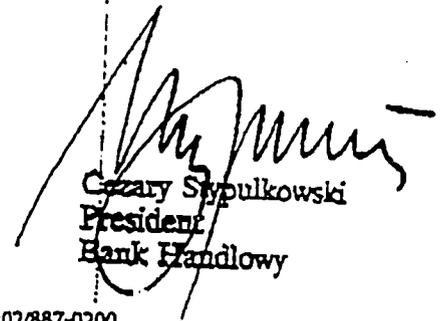
Implementation of the new collateral law would be a decisive step in transforming Poland's economy. Allowing both foreign and domestic creditors to reliably secure loans by the establishment of liens will permit capital to enter the country in much larger quantities. Also, investors and creditors alike will be able to increase their activity with confidence knowing that they are operating on a more level playing field. This can only encourage the development of the private sector and make Poland a much more attractive place for investment.

The secret tax liens and other shortcomings of the present body of law in this area are major impediments to investment. Whatever short term revenue gains are realized through the current provisions, they could not begin to compensate for the losses in investment revenues. We urge you to give the new collateral law your careful consideration.

Sincerely,

  
Joseph E. Pepper  
President  
Procter & Gamble

  
Percy Barnevik  
President and CEO  
ABB Asea Brown Boveri

  
Cezary Sypulkowski  
President  
Bank Handlowy

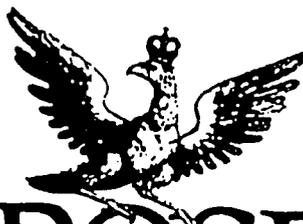
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# ATTACHMENT V

## PROGRAM KONFERENCJI NA TEMAT USTAWY O ZASTAWIE REJESTROWYM I REJESTRZE ZASTAWÓW

Warszawa, 27 lutego 1995

- 9:30-10:00 *Rejestracja uczestników.*
- 10:00-10:30 *Uroczyste otwarcie konferencji.*  
Wiceprezes Rady Ministrów, Minister Sprawiedliwości **Włodzimierz Cimoszewicz**  
Ambasador USA w RP **Nicholas Rey**
- 10:30-10:45 *Przerwa na kawę.*
- 10:45-13:00 *Sesja przedpołudniowa - Prowadzący: Prof. Tomasz Dybowski (do potwierdzenia):*  
Członkowie Komisji Reformy Prawa Cywilnego przy Ministrze Sprawiedliwości:  
**Prof. Feliks Zedler, dr Maciej Tomaszewski, dr Tomasz Stawecki.**  
*Prezentacja projektu ustawy.*  
  
Podsekretarz Stanu w Ministerstwie Sprawiedliwości, **dr Bohdan Zdziennicki**  
*Prezentacja założeń komputerowego systemu unifikującego rejestry sądowe.*
- 13:00-14:00 *Lunch.*  
  
Pokaz filmu pt. "Jak zarobić na bankructwie" (reż. Jerzy Krysiak) wyprodukowanego przez Apple Film Production, współfinansowany przez TVP Pr. I oraz IRIS, opisującego sposoby nieuczciwego korzystania z istniejącego systemu zabezpieczania wierzytelności pieniężnych.
- 14:00-15:15 *Sesja popołudniowa cz.1 - Prowadzący: dr Ronald A. Dwight*  
  
**Mancur Olson, Distinguished Professor of Economics, University of Maryland.** *Prawo zobowiązań, akumulacja kapitału, rozwój gospodarczy; nieuczciwi dłużnicy, a rozwój gospodarczy.*  
  
**John A. Spanogle, Distinguished University Professor, George Washington University, National Law Center.** *Jakie warunki musi spełniać system zastawów aby być użyteczny gospodarczo.*  
  
**dr Patricia Shapiro, U.S. AID Washington.** *Wspieranie przez Amerykańską Agencję d/s Rozwoju Międzynarodowego reform prawnych w procesie transformacji ekonomicznej w krajach Europy Środkowej.*  
  
**dr Paul F. Knotter, Przedstawiciel Banku Światowego w Warszawie**  
*Znaczenie jasnego i przejrzystego prawa zastawów dla tworzenia silnego sektora bankowości w Polsce.*  
  
Początek ogólnej dyskusji.
- 15:15-15:30 *Przerwa na kawę.*
- 15:30-16:30 *Sesja popołudniowa cz.2: Ciąg dalszy dyskusji.*
- 16:30-17:00 *Uwagi końcowe, oświadczenia, podziękowania - uroczyste zakończenie konferencji.*
- 18:00-20:00 *Przyjęcie w Pałacu w Królikarni, ul. Puławska 113A.*



# RZECZPOSPOLITA

Nr 68 (4021) Wydanie 3

Warszawa, wtorek, 21 marca 1995 r.

Nakład 277 497 egz. Cena 70 gr (7000 zł)

P. 10 

W Business Centre Club o gospodarce

## Podatki i prawo zastawu

Przedsiębiorcy skupieni w BCC rozumieją rozterki premiera w związku z decyzją Trybunału Konstytucyjnego w sprawie nieuznania wyższych stawek podatkowych na br. Proponują zawarcie umowy społecznej, na podstawie której placilibyśmy podatki według zwiększonych stawek. Rząd jednak powinien opracować system podatkowy, w którym przyszłe stawki będą niższe od obecnych.

Marek Goliżewski stwierdził, że biznesmeni z BCC i środowisk rzemieślniczych obawiają się o losy „Strategii dla Polski”. Podkreślił, że jeśli nie zostanie zrealizowana reforma sektora ubezpieczeń społecznych, to w przyszłym roku na ZUS trzeba będzie płacić 56, a nie ponad 40 proc., jak obecnie. Dodał, że nie sprawdzają się zapowiedzi polityków, bo jest wyższa inflacja, większe podatki, a szybka prywatyzacja została zastąpiona powszechną komercjalizacją. Dlatego też proponuje wprowadzenie takich rozwiązań, które pozwoliłyby ministrowi finansów na realizowanie zapowiedzianych zamierzeń. Uzasadził to następująco:

— Nie można podnieść płac górnikom tylko dlatego, że wyszli na ulicę i pod ich zażądaniem ugiął się rząd i parlament. To kolejny przykład negatywnego wpływu polityki na gospodarkę i słabej pozycji wicepremera.

Instytut Interwencji Gospodarczych BCC i Artur Nowicki, doradca prawny IRIS Centre Europe Project, zwracają uwagę na niedostosowanie obecnego ustroju zabezpieczeń kredytów w Pol-

sce do wymagań nowoczesnej gospodarki. — Nie istnieje centralny rejestr zastawów, a urząd skarbowy ma prawo stwierdzić powstanie zastawu ustawowego lub hipoteki ustawowej, zwanych popularnie tajnymi hipotekami. Może to spowodować sytuację, w której zabezpieczenie kredytu stanie się bezwartościowe i bezskuteczne — mówił na konferencji Artur Nowicki. Do dalszych pozostałości poprzedniego systemu zaliczył to, że należności Skarbu Państwa z tytułu podatków mają, obok wspomnianych zobowiązań podatkowych, pierwszeństwo przed wszystkimi należnościami z tytułu kredytów bankowych (art. 1025 k.p.c.). — To powoduje, że pożyczki pod zastaw są instytucją bardzo ryzykowną dla kredytodawców, niezależnie od tego, czy są to banki czy inne instytucje finansowe. Nie dziwnym się więc, że obce firmy nie chcą inwestować w naszym kraju — argumentował przedstawiciel IRIS. Poinformował, że projekt nowego prawa zastawu, skierowany do konsultacji międzyresortowych, nie do końca jest satysfakcjonujący. Kwestiami spornymi, oprócz wyeliminowania wspomnianych wcześniej przywilejów Skarbu Państwa, jest brak zgody banków na zdjęcie tytułu wykonawczego, dzięki któremu mogą dochodzić swoich roszczeń z pominięciem drogi sądowej. Nawet w sytuacji, gdy dłużnik zgodził się na podporządkowanie procedurze określonej w umowie.

LIDIA OKTABA

## ATTACHMENT VII

### **IRIS Poland-Project**

uprzejmie zaprasza na premierę filmu "Supez"  
oraz na okolicznościowy poczęstunek

17 marca 1995, o godzinie 19:00 w kinie Rejs  
przy ul. Krakowskie Przedmieście 21/23  
(wejście przez Kino Kultura).

Film "Supez" porusza ważny dla inwestorów zagranicznych problem ochrony  
własności intelektualnej w Polsce.

Produkcja: Apple Film Production

Reżyseria: Jerzy Krysiak

Scenariusz: Jerzy Morawski, Krzysztof Krauze

Film współfinansowany przez TVP, Program I oraz IRIS-Poland Project.

Liczba miejsc jest ograniczona do 40, dlatego bardzo prosimy o  
telefoniczne potwierdzenie przybycia, pod tel./fax: 45-18-79 lub  
45-25-12 w biurze IRIS.

### **IRIS Poland-Project**

requests the pleasure of your company  
at the premiere of the film "Supez" and a wine & cheese

March 17, 1995, at 7:00 p.m. in the cinema Rejs  
Krakowskie Przedmieście 21/23  
(entrance through the cinema Kultura).

"Supez" - a drama on the importance of intellectual property issues to foreign investors in  
Poland

Producer: Apple Film Production

Director: Jerzy Krysiak

Script: Jerzy Morawski, Krzysztof Krauze

The film was cosponsored by Polish TV, Channel I and the IRIS-Poland Project.

English translation will be provided. The number of places available is 40,  
so please confirm your participation by phone or fax at tel./fax: 45-18-79 or  
45-25-12 in IRIS office.

**ATTACHMENT VIII**

**APPLE FILM PRODUCTION sp. z o.o.**  
**PL. KONSTYTUCJI 3/10-13. 00 647 WARSZAWA**  
**TEL/FAX (48 22) 29 07 54**  
**TEL (48 2) 628 82 93**

RHB 39155 S.R.w W-wie

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Upowaznienie Kom.Kinemat.O-II-Vid-4971-27 07 1990

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**Mr Ronald A. Dwight**  
**Director**  
**IRIS-POLAND PROJECT**  
**Ksawerów 13**  
**02-656 Warsaw**

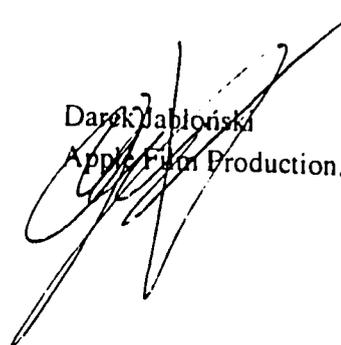
Warsaw, 17 February 1995

Dear Mr Dwight,

Thank you very much for the letter concerning your acceptance of two films produced by Apple Film Production which gave us great pleasure and satisfaction. We congratulated the authors and every person who had contributed to this success without hesitation. I do not have to add that the fact that you are satisfied with the result of our work is the best reward for us.

We share your hope that both of these films will help to reinforce democratic rules on Polish market. We remain with hope for further fruitful cooperation.

Yours Sincerely,

  
Darek Jablonski  
Apple Film Production, President

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# ATTACHMENT IX



*Embassy of the United States of America*

*Warsaw, Poland*

January 26, 1995

Office of  
The Ambassador

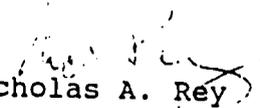
Mr. Ronald A. Dwight  
Director, IRIS-Poland  
C/o American Studies Center  
Warsaw University  
Ksawerow 13  
02-656 Warsaw

Dear Ron:

Thanks very much for your letter and the IRIS report on the NASK scientific computer network in Poland. I found it useful, given the current high level of interest in getting Poland up to speed on the information highway. As your report points out, the Internet grew out of an American network similar in concept to NASK, which could make it a useful reference point for Poland. On the other hand, your listing of strengths and weaknesses on page six of the report highlights the lack of a basic telecommunications infrastructure in Poland and other shortcomings that are external to NASK.

I realize that your study focussed on a specific issue requested by Scientific Research Committee (KBN) Chairman Karczewski. I wish him success in developing the network, and I hope that you will share your report widely within the Embassy community. From my perspective, your final recommendations on page 14 are essential. Poland must look at the big picture in planning its information systems. Please send me any additional studies you do on this issue.

Sincerely yours,

  
Nicholas A. Rey

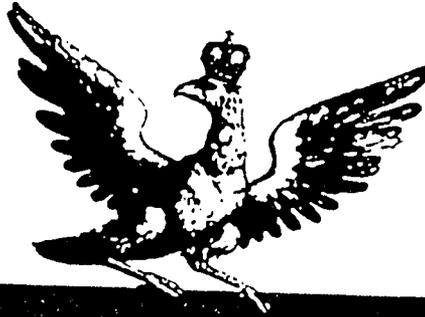


# RZECZPOSPOLITA

Nr 50 (4003) Wydanie 3

Warszawa, wtorek, 28 lutego 1995 r.

Nakład 279 438 egz. Cena 70 gr (7000 zł)



## PRAWO CO DNIA

Warszawa, wtorek, 28 lutego 1995 r.

STR 13

lawność w życiu gospodarczym

### Zastaw w rejestrze

Wprowadzenie do naszego systemu prawnego nowej instytucji—zastawu rejestrowego to przedmiot konferencji 27 um w Warszawie pod patronatem Włodzimierza Cimoszewicza, wicepremiera i ministra sprawiedliwości, zorganizowanej przez Ministerstwo Sprawiedliwości przy współudziale The Irish and Project. Uczestniczyli w niej prawnicy, praktycy i naukowcy polscy, amerykańscy oraz niektórych krajów Europy Środkowej i Wschodniej zainteresowani podobnym rozwiązaniem.

Projekt ustawy o zastawie rejestrowym i Rejestrze Zastawów przygotowała Komisja Reformy Prawa Cywilnego. Nowy rodzaj zastawu różni się od obecnego w tym, że bankowego, tzn. że zawierającego w sobie tytuł odnotowywany w dowodach, a wszystkie prawym skomputeryzowanym rejestrze i że dłużnik będzie mógł odstąpić z zastawionej rzeczy, towary itp. Takie rozwiązania są powszechnie

przyjęte w krajach o gospodarce rynkowej. Rejestr zastawów ma stać się w przyszłości ogniwem szerszego centralnego systemu rejestrów sądowych, które w sumie pozwolą na uzyskanie wiarygodnych informacji o partnerze gospodarczym lub kredytobiorcy, na ograniczenie „czarnej” strefy w gospodarce i nieuczciwej gry ekonomicznej. Mówił o tym dr Bohdan Zdzienicki, podsekretarz stanu w MS.

Jednym z węzłowych zagadnień konferencji była relacja między projektowaną instytucją a unormowaniami prawa podatkowego. Według tych ostatnich Skarbowi Państwa przysługuje ustawowe, powstające automatycznie prawo zastawu na ruchomościach podatnika, czasem nawet należących do osób trzecich i pierwszeństwo w ściąganiu należności podatkowych przed wszystkimi innymi. Z tego powodu obecnie np. bank, który udzielił kredytu pod zastaw, nie może praktycznie odebrać swych pieniędzy. Według no-

wych propozycji fiskus będzie miał pierwszeństwo, jeżeli zgłosi swe prawo do rejestru zastawów. W ten sposób potencjalny kredytodawca uzyska informację pozwalającą mu na zorientowanie się w sytuacji potencjalnego klienta.

Konferencja miała na celu wyłonienie problemów wymagających dopracowania. Jej uczestnicy wysłuchali wystąpienia prawników amerykańskich na temat warunków prawidłowego funkcjonowania zastawu rejestrowego i jego znaczenia w rozwoju gospodarczym i tworzenia silnego sektora bankowości w Polsce. O tej ostatniej kwestii mówił dr Paul F. Knott, przedstawiciel Banku Światowego w Warszawie.

Przedmiotem ożywionej dyskusji i kontrowersji była zawarta w projekcie ustawy propozycja ograniczenia przywilejów banków w egzekwowaniu swych należności.

IZABELA LEWANDOWSKA

## Zarobić na bankructwie

(A) „Jak zarobić na bankructwie” – to tytuł filmu wyświetlonego wczoraj na konferencji zorganizowanej przez Ministerstwo Sprawiedliwości i polsko-amerykańską firmę Iris. Konferencja poświęcona była przygotowywanemu projektowi ustawy o zastawie rejestrowym.

Zastaw polega na tym, że dłużnik daje wierzycielowi jako gwarancję spłaty długu jakiś przedmiot. Jeśli

dług nie zostanie spłacony – przedmiot ten przechodzi na własność wierzyciela. Przedstawiony wczoraj projekt zakłada powołanie instytucji zastawu rejestrowego, czyli takiego, w którym zastawiona rzecz może pozostać w dyspozycji dłużnika.

Obowiązujące przepisy o opankowanym zastawie rejestrowym są niedoskonałe. Alerzyści potrafią wielokrotnie zastawiać tę samą rzecz. Dopiero powszechnie dostępny, skomputeryzowany rejestr pozwoliłby kredytodawcom na szybkie sprawdzenie taktycznego stanu majątkowego osób ubiegających się o pożyczkę.

Projekt przewiduje też wprowadzenie znanej na Zachodzie tzw. umowy samopomoocy. Gdyby dłużnik przestał wólać kredyt, bank mógłby sam – bez pośrednictwa sądu ani komornika – zamować zastawione rzeczy i sprzedawać je na użytek. Ale to tylko pod warunkiem, że dłużnik zgodziłby się na to już na początku, podpisując z bankiem umowę kredytu.

18  
(Jotka)

# gazeta

## WYBORCZA

NR 50 (1738)

W

122

# Zastaw - gra w ciemno

Gospodarka rynkowa nie może istnieć bez systemu zabezpieczeń, gwarantujących spłatę pożyczek

Właściciel firmy X pożyczył w banku A 5 miliardów złotych pod zastaw Gósta wozowego mercedesa. Kolejne kredyty (łącznie 9 miliardów złotych) wylądował w bankach B i C, zastawiając ten sam samochód. Gdy firma zbankrutowała, okazało się, że prawo do zastawu, zgodnie z Kodeksem cywilnym, ma tylko ostatni pożyczkodawca, czyli bank C. Co z tego, skoro wcześniej klient trzech banków rozwiodł się, a przy podziale majątku sąd przyznał mercedesa byłej małżonce, która wyjechała za granicę.

Krzysztof Dolnik

Właściciel firmy odzieżowej Y zastawił w banku 20 profesjonalnych maszyn do szycia. W zamian dostał 10 miliardów złotych kredytu. Gdy okazało się, że firma jest niewypłacalna, pieniądze uzyskane za sprzedanie maszyn, zgodnie z Kodeksem postępowania cywilnego, poszły na koszty egzekucyjne i zapłatę zaległych podatków. Bank nie otrzymał nawet złotówki.

Zagraniczny inwestor kupił fabrykę Z pod Krakowem. Słowną umowę podpisał minister prywatyzacji. Po dwóch latach wyszło na jaw, że fabryka ma stare długie podatkowe (sprzedaż daty zawriska i transakcji) i państwu przysługujące prawo do zastawu ustawowego na majątku przedsiębiorstwa. Inwestorowi doradzono powołanie do sądu Ministerstwa Przekształceń Własnościowych, które przed sprzedażą zabezpieczyło, że fabryka nie jest zadłużona. W efekcie wiec zagraniczny na firmę za kilkanaście milionów dolarów kupił sobie bardzo dług proces przeciwko MPW.

Nic ma prościej rzeczy

"Brak sprawnego systemu za bezpieczeństwo jest jedną z przyczyn, dla których więcej kapitału zagranicznego zainwestowano na tej ulicy byłego Berlina Wschodniego niż w całej Europie Centralnej", twierdzi Ronald A. Dwight, dyrektor amerykańskiej organizacji IRIS-Poland Project (Institutional Reform and the Informal Sector), zajmującej się przemianami instytucjonalnymi w Polsce. I dodaje: "Polska nie ma szans na inwestycje bez reformy prawa zabezpieczenia. Kapitał dotychczas tu ulokowany pochodzi z wielkich koncernów lub instytucji finansowych, czyli od tych, którzy albo mają duży potworek, albo mogą pozwolić sobie na duże ryzyko".

"Ustawa o zastawie rejestrowym i rejestrze zastawów zwiększy bezpieczeństwo obrotu gospodarczego. Jest to ważny element przekształcenia polskiego prawa, styczny z nowymi gospodarką wolnorynkową", uważa Włodzisław Cimoszewicz, wicepremier i minister sprawiedliwości. Natomiast Nicholas Rey, ambasador USA w Polsce, na konferencji zorganizowanej przez IIIIS-PP stwierdził: "Nie ma prostszej rzeczy, która mogła tu zrobić i która będzie miała tak duży wpływ na rentowność przedsiębiorstw i banków".

Prace nad projektem ustawy rejestrowej rozpoczęły się jesienią 1992 roku w Komisji Reformy Prawa Cywilnego przy Ministrze



Sorawiedliwości. Wcześniej okazało się, że instytucje prawne służące zabezpieczeniu kredytów, takie jak hipoteka, zastaw bankowy, poręczenie czy gwarancja, są dalece niewystarczające. Afery związane z wyludzeniem kredytów pod to samo zabezpieczenie, brak rejestru dłużników banków, korupcja wśród rzeczoznawców, którzy podpisali się pod wycenami wielokrotnie przewyższającymi wartość zastawianych nieruchomości lub rzeczy, i inne nieprawidłowości doprowadziły do bankructwa niejednego banku.

Zastaw z pierwszeństwem

Pierwszy roboczy projekt utworzenia instytucji zastawu rejestrowego był gotowy w marcu 1993 roku. Jednak dopiero w rok później powstała na tyle kompromisowa wersja ustawy, że podpisał się pod nią prawie wszyscy członkowie ministerialnej komisji. Intencją jej autorów było stworzenie prostego i skutecznego systemu zabezpieczenia dla wierzycieli, zaś dla wszystkich pozostałych, możliwości uzyskania szybkiej i w pełni wiarygodnej informacji o ustanowieniu takiego zabezpieczenia.

Wymaganie, o tym nie odpowiadała, funkcjonująca już w naszym prawie, instytucja zastawu bankowego. Chociaż zgodnie z artykułem 306 Kodeksu cywilnego umowa o ustanowieniu zastawu powinna być wpisana do rejestru prowadzonego przez bank, ale i tak jest on niedostępny dla potencjalnych wierzycieli. A więc nawet inny bank nie ma większych szans, by w porę dowiedzieć się, że np. maszyn, urządzenia lub środki transportu są już zastawione, a potencjalny klient jest oszustem.

Jest to niemożliwe także z tego powodu, że nie istnieje centralny rejestr zastawów. A więc potencjalny kredytodawca musiałby sprawdzić w ponad 1,5 tysiąca banków (spółdzielczych są tu wyjątkowo wdrażeni klienci), czy proponowana w zastaw ruchomości jest już zastawiona.

wania cywilnego (artykuł 1025 ustęp 1), gdy przychodzi pora na odebranie należności, bank jest dopiero piątą w kolejce. Wcześniej z tego, co zostało, trzeba popłacić koszty egzekucyjne, alimenty, pensje i chorobowe pracownikom (a także, w razie nieśczęścia, za najłatwiej pogrzeb dłużnika). Następnie w kolejce do kasy jest Ministerstwo Finansów, w imieniu którego poborca podatkowy odbiera wszystko, co należy się fiskusowi, razem z odsetkami za zwłokę i własnymi kosztami egzekucyjnymi. Potem

jeszcze urząd skarbowy bierze sobie zaległe opłaty za wyczysto użytkowania terenów i budynków będących własnością Skarbu Państwa (plus karne odsetki i koszty egzekucji). I dopiero teraz, jeśli jeszcze cokolwiek zostało, bank może zgłosić się po należność z tytułu udzielonego kredytu. A na samym końcu są należności zabezpieczone hipotecznie lub prawem zastawu.

Rejestr dla każdego

Z instytucji zastawu rejestrowego mogłyby korzystać banki (także zagraniczne mające w naszym kraju przedstawicielstwa lub oddziały) oraz międzynarodowe organizacje finansowe, do których Polska należy, np. Bank Światowy lub EBOR. Doktor Maciej Tomaszewski, członek Komisji Reformy Prawa Cywilnego i jeden z autorów ustawy proponuje, by poszerzyć tę listę o wszystkie osoby prawne mające siedzibę w Polsce. W projekcie zapisano również delegację dla ministra sprawiedliwości, który w porozumieniu z ministrem finansów i prezesem NBP, mógłby wskazać inne pod-

mioty, których wierzytelności byłyby zabezpieczone zastawem rejestrowym. Możliwe jest też ustanowienie zastawu dla konsorcjum bankowego.

Umowa zastawu będzie musiała być zawarta na piśmie i umieszczona w rejestrze zastawów (wzrostek w tej sprawie powinien być złożony w ciągu miesiąca). Bardzo ważne jest to, że przedmioty obciążone zastawem będą mogły przetrwać u dłużnika (zastawcy), co jest szczególnie ważne wówczas, gdy są to środki produkcji. Zastawione mogą być także ruchomości należące do osoby trzeciej, oczywiście za jej zgodą.

Przedmiotem zastawu rejestrowego mogą być wszystkie rzeczy ruchome, z wyjątkiem statków morskich (wpisanych do rejestru okrętowego), oraz zbywalne prawa majątkowe. Projektowana ustawa, tak jak obecnie obowiązujące przepisy, także dopuszcza możliwość zbycia lub obciążenia rzeczy zabezpieczonych zastawem (również nieruchomości obciążonej hipoteką). Nowością jest to, że wierzyciel będzie mógł zaspokoić swoje roszczenia, niezależnie od tego, czyją własnością jest w danej chwili przedmiot zastawu. Jednak teraz w umowie może znaleźć się zastrzeżenie, że dłużnik nie może zbyć zastawionej rzeczy, ani jej nie obciążać, przed wygaśnięciem umowy zastawowej. Gdyby jednak tak się stało, bank może zażądać natychmiastowej spłaty długu.

Największą zaletą zastawu rejestrowego jest to, że tak zabezpieczony wierzyciel ma pierwszeństwo w zaspokojeniu swoich roszczeń przed wszystkimi innymi wierzycielami, także wierzycielami wynikającymi z prawa publicznego (np. z tytułu podatków). "Zobowiązanie realne" (tj. finny zabezpieczenia, projektowana ustawa musi funkcjonować jako lex specialis) twierdzi doktor Tomasz Stawicki. Jeden z jej autorów. W tej sytuacji, jeżeli Skarb Państwa chciałby zapewnić sobie pierwszeństwo przed wierzycielami korzystającymi z zastawu rejestrowego, musi wcześniej zgłosić w rejestrze swoje prawa. Nie wiadomo, czy na taką wersję ustawy zgodził się Ministerstwo Finansów, która w przygotowywanymi własnymi Kodeksem podmiotowym proponuje, by utworzył inny rejestr - imiennicy polakich wierzycieli.

Rejestr zastawów, prowadzony przez sądy rejonowe, byłby jawny i publiczny, dostępny nie tylko dla banków, ale i osob trzecim, zainteresowanych kondycją dłużnika. Za korzystanie z rejestru uszczaliby się tzw. opłaty kancelaryjne, a więc instytucja ta mogłaby się sama finansować. Przewidywane także komputerowy rejestr zastawów. "W przyszłości możliwe jest utworzenie systemu rejestrowego publicznego bez którego trudno wyobrazić sobie np. funkcjonowanie rynku kapitałowego", twierdzi doktor Flohman Zielenicki, wiceminister sprawiedliwości. W jego akcie wchodziłby rejestr podmiotowy gopodarczych, rejestr ksiąg wierzycieli i rejestr zastawów. Pierwotną wana ustawą jest więc pierwszym etapem tworzenia sprawnego systemu informacji biznesowej.

»W postępowaniu egzekucyjnym bank jest dopiero piątą w kolejce«

W naszym prawie przechowała się jeszcze jedna zasada, która ma zastosowanie zarówno przy zastawach posesyjnych, jak i rejestrowych. Artykuł 310 Kodeksu cywilnego stanowi, że zastaw, powstały na tej samej rzeczy później, ma pierwszeństwo przed zastawem wcześniejszym. A więc np. prawo do pieniędzy uzyskanych przez komornika za sprzedaż nieruchomości zastawionej w piólu bankach ma tylko ten ostatni. Pozostałe cztery, które wcześniej udzielił kredytów, nie uzyskają nic, choć nie są winne żadnego niedopatrzenia, bo nie były w stanie sprawdzić zastawu. Ponadto nawet ten uprzywilejowany bank nie ma żadnej pewności, że kredytobiorca nie sprzeda swego zabezpieczenia. Jeśli na bywa kupi go w dobrej wierze, bo też nie był w stanie dowiedzieć się, że jest to już przedmiot zastawu, samochód pozostaje u niego.

Hierarchia dzikolna

Nie tylko dlatego gra w zastaw jest gra w ciemno. W postępowaniu egzekucyjnym, zgodnie z postanowieniami Kodeksu postępo-

## Z tajnego archiwum watykańskiego Święci i grzesznicy

W Kolegium Teutońskim w Watykanie odbyła się prezentacja wyboru dokumentów z tajnego archiwum watykańskiego, który ukazał się pod tytułem „Święci i grzesznicy”. Są to między innymi pochodzące z lat 1451–1586 supliki kierowane do papieży w sprawie nadużyć i prześladowań ze strony inkwizycji oraz wyznania świeckich i duchownych, którzy ulegli pokusom seksu i przemocy. Wśród opublikowanych dokumentów jest list pewnej zakonnicy, która 20 maja 1461 roku

zwracała się o dyspensę do rzymskiego dykasterium zajmującego się wyznaczaniem pokuty, przyznając się do zabicia swoich dwojga nie ochrzczonych dzieci.

Inny dokument stwierdza, iż 29 czerwca 1463 roku pewien świecki Hiszpan zwracał się o zdjęcie z niego ekskomuniki za zabicie księdza. Autor supliki wyznaje, że pomógł on innemu kapłanowi „obciąć genitalia księdza, którego zastał on w domu swojej konkubiny; ksiądz ten wkrótce zmarł”. (kw)

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## Polskie prawo bankowe pochodzi z początku wieku Szansa dla bankowców

Nie ma polskiego prawa bankowego na poziomie europejskim. Zasady, które obecnie obowiązują pochodzą z początku naszego wieku. Dlatego też tak ważna jest projektowana ustawa o zastawie rejestrowym, w której projektodawcy upatrują szansę dla sprawnego funkcjonowania systemu bankowego i dla zmian gospodarczych w Polsce. Jeżeli rozwiązania projektu Ustawy zostaną przyjęte zwiększy się

pewność zabezpieczeń kredytowych i Polska ma szansę na otrzymanie kredytów zagranicznych na lepszych warunkach. Współtwórcami ustawy są m. in. amerykańscy profesorowie: Mancur Olson i J. A. Spanogle i oni to wystąpili w trakcie sesji, która odbyła się w Pałacyku przy ul. Ksawerów. Specjalnym gościem był Minister Sprawiedliwości Włodzimierz Cimoszewicz. (gaka)

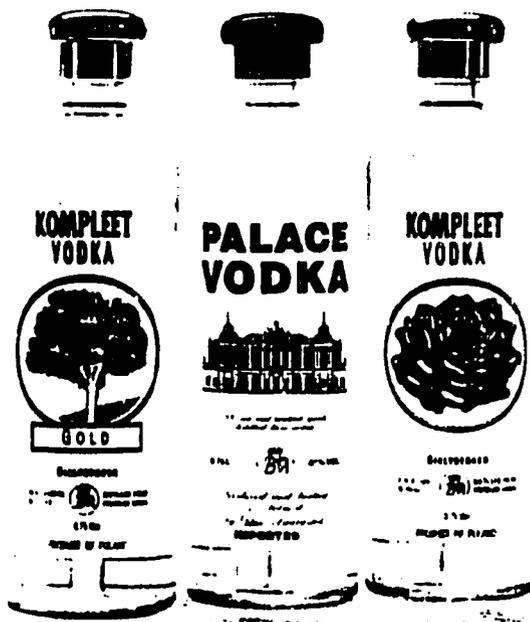
## 8 procent dochodów państwa ze sprzedaży wódki Wódka potęgą jest i basta

W ubiegłym roku 8 procent dochodów budżetu pochodziło ze sprzedaży wódki. Było to ponad 50 bilionów starych złotych. Trzy czwarte ceny każdej butelki zabiera budżet państwa. Z pozostałej części 30 procent to zysk pro-

ducenta, który jest oczywiście opodatkowany. W Polsce sprzedaje się tyle samo wódki, ile w Stanach Zjednoczonych – największym rynku zachodnim. Corocznie Polacy opróżniają 440 milionów butelek po 0,75 litra. Wyprzedzają nas

tylko Rosjanie, którzy w świecie nie mają konkurencji. 95 procent spożycia alkoholu w naszym kraju to wódka czysta. W Polsce działają 22 państwowe wytwornie wódek i 10 prywatnych. W ubiegłym roku wódki drożały trzykrotnie, w sumie o 32 procent. W tym roku mają zdrożeć o 18 procent.

Produkcja wódki wydaje się świetnym interesem i wpływa bezpośrednio na kondycję budżetu państwa. Ale czy jest to tylko biznes? Każdego roku ponad 100 tysięcy osób objęte jest leczeniem odwykowym na koszt państwa. Ponad milion osób uzależnionych jest od alkoholu, a to też kosztuje. Czy zyski i straty się bilansują? (kw)



### 5 najchętniej kupowanych wódek w Polsce

Wyborowa	24 %
Koszarne	20 %
Extra żytnia	17 %
Polonez	15 %
Krakus	9 %

## Rozmowa z Aleksandrą Jakubowską, rzecznikiem prasowym rządu Józefa Oleksego.

### Z własnej woli

● Powiedziała Pani niedawno, że dziennikarstwo Panią znudziło. Dlaczego?

– Nie powiedziałam wyraźnie, że znudziło. Powiedziałam, że nie widzę w nim dla siebie dzisiaj miejsca. Stałam na pewnym skrzyżowaniu dróg. Ta, którą wybrałam wydała mi się optymalna.

● Gdyby stanowisko rzecznika zaproponował Pani premier Janusz Korwin Mikke to by się Pani zgodziła?

– Nie

● Spośród wszystkich rzeczników rządu w ostatnich latach tylko Pani jest rzecznikiem i dziennikarką. Jaki to będzie miało wpływ na pracę biura prasowego? Jak zorganizuje Pani współpracę z dziennikarzami?

– Zapomniał pan o Małgorzacie Niezabitowskiej, też dziennikarce. Chciałabym, żeby ta współpraca była oparta na rzetelnych, partnerskich układach, ja ze swej strony jak najwięcej w ramach moich możliwości, a oni – w zgodzie z etyką zawodową. Oczywiście nie wyobrażam sobie sielanki – na pewno będą jakieś incydenty, ale oby jak najmniej.

● Co będzie jeśli się pojawi dyktemat: być w zgodzie z szefem czy w zgodzie z samą sobą?

# W rejestrze

*Przepisy o zastawie rejestrowym do szybkiej zmiany*

MACIEJ URBANIAK

Czy w Polsce kończy się okres „pierwotnej” akumulacji kapitału? By tak się stało, musi zostać zrealizowana zasada maksymalnej jawności i pewności obrotu gospodarczego. Bez skomputeryzowanych, w pełni dostępnych i kompletnych rejestrów sądowych nie może być o tym mowy.

Podobnie jak bez nowoczesnych, skutecznych instrumentów zabezpieczenia kredytu, takich jak mądrze uregulowany zastaw rejestrowy. Prace nad tymi zagadnieniami (ściśle łączącymi się ze sobą) podjęto przed czterema laty. Czy wolno nie mieć nadzieję, że wreszcie zbliżają się do końca?

Ministerstwo Sprawiedliwości zaprezentowało publicznie projekt ustawy o zastawie rejestrowym i rejestrze zastawów. Projekt ma tę zasadniczą zaletę, że jest już po uzgodnieniach międzyresortowych i istnieje nadzieja, że przed końcem marca trafi do KERM. Jego wejście w życie może oznaczać prawdziwą rewolucję w dziedzinie zabezpieczenia kredytu

rzecz pozostała we władaniu kredytobiorcy, może on skutecznie obciążyć ją kolejnymi zastawami. W praktyce bankowej zdarzały się przypadki ośmiokrotnego obciążenia tej samej rzeczy.

Równocześnie ustanowiona w art. 306 zasada bezwzględności pierwszeństwa szczególnego (przed wszystkim Skarbu Państwa z tytułu zobowiązań podatkowych) powoduje, że bank dysponując nawet realnym zastawem (np. papierami wartościowymi czy biżuterią) nie jest pewien, czy po sprzedaży przedmiotu zastawu fiskus nie zgłosi roszczenia do całości kwoty.

## Będzie lepiej?

Projekt ustawy likwiduje wszystkie dotychczasowe słabości zastawu jako formy zabezpieczenia kredytu lub pożyczki.

Dla ustanowienia zastawu rejestrowego niezbędne ma być nie tylko zawarcie umowy, ale również wpis jej podstawowych elementów do prowadzonego przez sąd rejestru zastawów. Rejestr ma być skomputeryzowany i dla zainteresowanych instytucji (głównie banków) dostępny poprzez moderny telekomunikacyjny

Przy zastawie rejestrowym odwróceniu ulegnie dotychczasowa zasada pierwszeństwa. Zastaw powstały wcześniej będzie miał bezwzględne pierwszeństwo przed zastawami powstałymi (z gloszo-

nowawcą (zastawnik) oświadczenia o przejęciu na własność przedmiotu zastawu

## Czas i pieniądź

Cała koncepcja ma sens jedynie wówczas, gdy „zagra” rejestr. Jego przygotowanie i utworzenie będą wyjątkowo kosztowne i skomplikowane. Ministerstwo Sprawiedliwości od pewnego czasu prowadzi wprawdzie intensywne prace przygotowawcze nad skomputeryzowaniem wszystkich istniejących rejestrów sądowych, jednak „od pomysłu do przemyślenia” droga jeszcze daleka.

Prace prowadzone są w ścisłej współpracy z Norwegami, którzy dzieła komputeryzacji rejestrów dokonali przed kilku laty kosztem wielu milionów koron. System jest bowiem drogi, a raczej - kosztowne są jego zabezpieczenia. Muszą być niezawodne, gdyż wydruk z komputera ma mieć walor dokumentu urzędowego.

Resort chciałby, aby w jednej sieci komputerowej znalazły się trzy rejestry: podmiotów gospodarczych - obejmujący wszystkie przedsiębiorstwa gospodarcze w większym rozmiarze, zastawów rejestrowych oraz ksiąg wieczystych. Wymaga to oczywiście zmian prawa oraz długiego okresu przygotowawczego. Wymaga też pieniędzy.

Przewiduje się powołanie specjalnej firmy, która prze-

## Przywileje inaczej

Projekt ustawy o zastawie rejestrowym stanowi ważki przyczynek do dyskusji na temat bankowych przywilejów egzekucyjnych. Ministerstwo Sprawiedliwości proponuje, by w miejsce dotychczasowych tytułów wykonawczych (które można składać bezpośrednio u komornika do egzekucji) banki mogły wystawiać jedynie tytuły egzekucyjne, które klauzulami wykonalności opisywać będą sądy. Banki na podstawie własnych tytułów będą mogły jednakże dokonać zabezpieczenia roszczenia (np. przez zajęcie rachunku bankowego dłużnika).

Wystawienie tytułu będzie możliwe jedynie wówczas, gdy roszczenie banku będzie wynikało bezpośrednio z niektórych tylko czynności bankowych związanych z: udzieleniem kredytu, pożyczki, poręczenia lub gwarancji, stosunkiem akredytywy lub operacjami wekslowymi i czekowymi.

Prawo ma też określać niezbędne elementy każdego bankowego tytułu egzekucyjnego. Wprawdzie jeszcze nie obowiązuje, ale gwoździ orzeczenia poprawnej praktyki bankowej przytoczmy za projektem:

„W bankowym tytule (...) należy oznaczyć bank, który go wystawił i na rzecz którego egzekucja ma być prowadzona, dłużnika zobowiązanego do zapłaty, wysokość zobowiązań dłużnika wraz z odsetkami i terminami ich płatności, datę wystawienia bankowego tytułu egzekucyjnego, jak również oznaczenie rodzaju czynności bankowej, z której wynikają dochodzone roszczenia, oraz wzmiankę o wymagalności dochodzonego roszczenia. Tytuł należy opatrzyć pieczęcią banku oraz podpisami i nazwiskami osób uprawnionych do działania w jego imieniu”. (MU)

teje try, oraz wzięte na ich utworzenie pożyczki z międzynarodowych instytucji finansowych. Później rejestry utrzymywałyby się same, z opłat wnoszonych za korzyść z nich przez podmioty gospodarcze i obywateli

Ustawa o zastawie rejestrowym ma wejść w życie w tym miesiącu od dnia publikacji. W tym momencie rejestry muszą już być gotowe. Czy oznacza to, że rewolucja w dziedzinie zabezpieczenia kredytów dożyjemy się dopiero w XXI wieku?



# PRAWO NA ZAMÓWIENIE

DODATEK SPECJALNY DO: GAZETY PRAWNEJ NR 11 (22)

## I

- Czym jest Fundusz Gwarantowanych Świadczeń Pracowniczych (FGŚP)
- Ustawa o ochronie roszczeń pracowniczych w razie niewypłacalności pracodawcy
- Rozporządzenie MPiPS w sprawie rozszerzenia zakresu świadczeń pracowniczych podlegających zaspokojeniu ze środków FGŚP
- Rozporządzenie MPiPS w sprawie wysokości składki na FGŚP
- Rozporządzenie MPiPS w sprawie trybu składania wykazów i wniosków o wypłatę świadczeń z FGŚP, przekazywania środków z tego Funduszu oraz dokonywania wypłat świadczeń

## II

- Projekt ustawy o zastawie rejestrowym i rejestrze zastawów wraz z uzasadnieniem oraz komentarz

# IRIS-RUSSIA's

COMMERCIAL LAW REFORM INITIATIVE

QUARTERLY REPORT NO. 7

QUARTERLY REPORT FOR PERIOD  
JANUARY 1, 1995 - MARCH 31, 1995

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DATE OF REPORT: APRIL 12, 1995  
PROJECT TITLE: RUSSIA COMMERCIAL LAW  
PROJECT No. 110-0007  
BOA No. ANE-0015-B-00-1019-00  
DELIVERY ORDER No. 12

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## Quarterly Field Report: Russia Commercial Law Project

### I. ADMINISTRATIVE DATA

Reporting Period: January 1, 1995 - March 31, 1995  
BOA Number: ANE-0015-B-00-1019-00  
Delivery Order Number: 12  
AID Project Office: G/EG/SMIE (R. Mitchell, 300 SA-2)  
AID Office funding delivery order:  
Democracy and Governance  
AID Office project: Institutional Reform and the Informal  
Sector (IRIS) Project

### II. PERFORMANCE INFORMATION

#### 1. Project purpose summary statement:

##### A. Project Purpose

The objective of the IRIS-Russia Project's Commercial Law Reform Initiative is to assist and train Russian law makers, judges, and legal practitioners at the Federation level as they develop the components of a commercial law regime essential for Russia's transition to a market economy. Specifically, IRIS-Russia is concentrating its efforts in the following areas:

- 1) Collaboration with the drafters of the new *Russian Civil Code*.
- 2) Examination and implementation of measures necessary to develop a system of *secured commercial lending*.
- 3) Translation and dissemination of the United States *Uniform Commercial Code*.
- 4) Sponsorship of *forums* on the legal, institutional, and economic foundations of *commercial law*.
- 5) *Training of judges* in commercial law, market economics, civil procedure, and court administration.

##### B. Relationship to USAID Program Strategy

The IRIS approach in Russia is similar to its

approach in other countries, namely, to strengthen indigenous capacity to understand and carry out needed legal reforms. Therefore, the assistance provided will not only be directed toward crafting legislation, but will also emphasize the broader economic and market principles that form the foundation of an effective commercial law regime. Additionally, IRIS will encourage Russian policy makers and draftsmen to open the legislative process to include input and discussion from private sector groups most affected by the laws. Finally, IRIS recognizes the critical role Western advisors play in the reform process. They should not, however, attempt to dictate the reform agenda or take the place of Russian draftsmen. Therefore the foreign assistance component of Russian legal reform should be less and less visible as local experts and political leaders lead and complete the process. IRIS will provide policy makers with the tools necessary to accomplish this task.

C. Progress toward Project Purpose

i. Civil Code.

On 01 January 1995, Part I of Russia's new Civil Code went into effect. Identified by President Yeltsin as the "economic constitution of the Russian Federation," the Code establishes fundamental principles of civil and commercial law. Part I contains the general provisions of civil law, including sections on corporations, property rights, contracts, and secured transactions.

Although not a cure-all to Russia's economic problems, this commercially modern Civil Code is a major advance in Russian reform efforts. It replaces the Brezhnev era Code of 1964, designed for an administrative-command system, and also wipes away the ill-designed patchwork of laws and decrees that had been laid on top of the Soviet era legal system.

The new Code makes fundamental breaks with past Soviet and Russian legislation by effectively guaranteeing both freedom of contract and protection of private property. In addition, the Code promotes commercial lending to small and medium-sized enterprises by instituting a faster, more efficient, and cost-effective system of debt recovery -- a significant improvement over the

current Russian Law on Pledge of 1992. The Code will also serve as a sword against the proliferation of financial crimes that is undermining society's confidence in the market.

Drafting of the Code, coordinated by President Yeltsin's Research Center for Private Law, was accomplished with the assistance of foreign legal experts from the United States and Europe. The USAID-funded IRIS Center has provided continuous expert advice to the Research Center, prompting greater openness and participation throughout the drafting process. This was accomplished in several ways: 1) copies of the draft were circulated among Russian and Western legal communities; 2) visiting Western commercial law experts held sessions not only with the drafters but conducted talks and lectures on issues raised in the text with groups of officials, judges, lawyers, and business people; and 3) briefings by the RCPL and IRIS were organized for similar groups. Efforts to implement the new law have been promoted through activities such as the EBRD/IRIS/Supreme Arbitration Court Conference on Secured Commercial Lending. This event targeted practical aspects of using the new Code for an audience of judges, lawyers, businesses, and parliamentarians.

The Research Center and IRIS are now directing their attention to the second part of the Code, due to be enacted in 1995. Part II will contain more detailed provisions of commercial law, including the law of sales, banking transactions, leasing, torts, intellectual property, and inheritance.

During the reporting period, IRIS brought Professor Summers of Cornell University and Professor James White of the University of Michigan to Leiden University in the Netherlands to work with the drafters on the text of Part II and to address Civil Code drafters from four other CIS countries, Ukraine, Belarus, Kazakhstan, and Kyrgyzstan. A delegation from Mongolia also attended. White continued his work with the drafters on the four chapters on banking and Summers reviewed further aspects of Sales Law.

#### ii. *Secured Commercial Lending.*

In market economies, the institutional framework of clear laws, fast and inexpensive

self-enforcement procedures--supported by the judicial system--and collateral or property registries creates an environment conducive to lending. To date, these elements are not yet fully operational in Russia.

The lack of modern commercial banking systems in Russia is one of the principal impediments to further economic development in the region. The unwillingness of commercial banks to extend credit to local firms is due less to their fears of inflation than to fears they will not be repaid. Therefore, the ability particularly of small and medium size enterprises (SMEs) to borrow in order to expand their businesses will not improve substantially even when inflation is eventually brought under control. The creation of legal and institutional mechanisms to ensure credit repayment is thus one of the most important reform initiatives in the transitional process.

Among the legal and institutional prerequisites for a viable system of commercial lending are an effective law on secured transactions and easily accessible property registries. IRIS has worked with the drafters of the Civil Code to incorporate an improved collateral law into the new Code. However, the Russian government has paid little attention to registration issues, except in the area of real property.

In order to focus greater attention on the existing barriers to financial lending, IRIS co-sponsored an International Conference on Secured Commercial Lending in the CIS on November 4-5, held in Moscow at the Supreme Arbitration Court of the RF. Additional sponsors included the European Bank for Reconstruction and Development, the Inter-Parliamentary Assembly of the Commonwealth of Independent States, the Supreme Arbitration Court of the Russian Federation, the Scientific Consulting Center for Private Law of the CIS and USAID.

The Conference targeted both law makers who are drafting legislation on pledge, property registries, and financial institutions, and the bankers who must make the ultimate decisions of whether to lend. During the morning session of Day One, Conference speakers reviewed secured lending

laws and practice in Russia, the CIS, and western market economies. In the afternoon, panelists discussed specific elements of secured transactions, such as property, enforcement, insolvency, and registration. On Day Two, the audience participated in analyzing a hypothetical secured transactions deal.

The Conference was a huge success, attracting almost 200 people from over 90 organizations, including banks, law firms, businesses, the government, legislature, and judiciary. Delegates from fourteen different countries attended, including the United States, Great Britain, Norway, Germany, Poland, Lithuania, and Russia. CIS countries represented, in addition to Russia, included Ukraine, Belarus, Georgia, Moldova, Azerbaijan, Kazakhstan, and Uzbekistan.

Among the speakers were the First Deputy Chairman of the Supreme Arbitration Court, the Deputy Chairman of the Federal Bankruptcy Agency, the President of Citibank-Moscow, the General Counsel of the EBRD, the Director of IRIS, the managing partners of leading western law firms in Russia, law professors from Columbia and Michigan Universities, and the Executive Director of the International Bank of Japan. Mikhail Mityukov, the First Deputy Chairman of the State Duma, delivered the Keynote Address on the parliament's role in Russian legal reform.

The proceedings will be published by the EBRD and IRIS in English and Russian this Spring.

iii. *Uniform Commercial Code.*

Enhanced access to information on commercial law in market economies is essential to increase the understanding of Russian law makers, private attorneys, judges, teachers, and students. Recognizing this fact, the Research Center of Private Law has initiated a project to translate and publish the civil and commercial codes of major European countries and the United States. IRIS and the Research Center are working together to translate, publish, and disseminate the United States Uniform Commercial Code (UCC). A Russian version of the UCC was published in the USSR in the 1960s, but the American Code has changed significantly since then, thus necessitating a

revised edition.

IRIS and the Research Center selected editors and translators to update the Russian-language UCC. The editor, a prominent Russian judge, was one of the original translators of the 1960s edition. During the reporting period, the majority of the translation was completed. The text will be edited and published in the spring of 1995. The final product will include introductions by Professors Robert Summers and James White, authors of the most widely used hornbook on American commercial law, and by the Russian editor.

Furthermore, IRIS and the Research plan to develop a commentary section tailored to the Russian legal tradition. This commentary, which will include official comments from the UCC, will help Russians interpret their new Civil Code, just as annotations to the UCC assist the American legal community in understanding its commercial code.

#### *iv. Forums on Commercial Law and Economics*

Russians recognize the importance of the economic underpinnings and incentive structure that a commercial law regime should reflect. In order to enhance this understanding, the IRIS Center, in cooperation with assorted Russian institutions, has organized an on-going program of workshops, seminars, and lectures on the concepts central to the establishment of an effective commercial law system, including commercial law and practice, market economics, and the rule of law.

Specifically, IRIS has sponsored a lecture at the High Arbitration Court on American perspectives on the draft Russian Civil Code by Professors Summers and White. IRIS has also run seminars for both faculty and students at Moscow State University Law School on banking and securities law, on legal developments for Peace Corps volunteers, and on collateral law for Russian credit officers. Additionally, IRIS representatives have delivered speeches on topics such as law reform, contract performance, foreign investment, commercial dispute resolution, and collateral law at a variety of international conferences, in Russia, Poland, and the United States. IRIS has also sponsored a series of talks by Russian law makers involved in drafting the new Civil Code to western audiences.

Additionally, IRIS is working to establish a Business Law Roundtable at which the ultimate consumers of law -- entrepreneurs, bankers, and lawyers -- can meet with the drafters of commercial legislation to discuss the effects of prospective laws on economic activity prior to enactment.

v. *Judicial Training.*

Enhancing judicial capacity to resolve complex business disputes is one of the key elements of the legal reform process. Without a better informed and more efficient judiciary, Russia's new laws, such as the Civil Code, will prove ineffective.

In the Fall of 1994, IRIS brought twenty-two civil law judges and court administrators from federal, regional, and city courts across Russia to the US to study commercial law, civil procedure, and court administration.

IRIS hopes to conduct follow-up activities to this judicial training program in Russia in the near future.

2. Progress report

A. Technical Implementation<sup>1</sup>

Activities Planned for Reporting Quarter	Current Status	Explanations (Problems, steps to resolve, etc.
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<sup>1</sup> Status of activities as defined in the delivery order.

<p>1. <u>Civil Code</u></p> <p>a. IRIS Workshop on Civil Code, Part II, Moscow. Sections to be covered: Bank Accounts, Loan and Credit, Payments, Deposits; Lease, Rent, Franchising; Insurance; Intellectual Property; Inheritance.</p> <p>b. Leiden Working Session on Part II of Russian Code, Leiden University.</p> <p>c. Translation and Dissemination of Civil Code, Part II.</p> <p>d. Analysis and Commentary on draft Code.</p> <p>e. Briefings on Part I of Civil Code.</p> <p>f. Briefing on Part II of Civil Code to International Lawyers Group (ILG).</p> <p>g. Article on new Civil Code.</p>	<p>2</p> <p>1</p> <p>1</p> <p>2</p> <p>1</p> <p>1</p> <p>2</p>	<p>Preparations for Drafting Workshop in May underway. American experts, drawn from both law firms and law schools, to focus on select articles from Part II.</p> <p>IRIS brought Professors Summers and White to Leiden to work with Russian drafters and drafters from other CIS countries on Sales and Banking sections.</p> <p>IRIS had draft of Part II translated and distributed widely to businesses and law firms in Russia and interested groups in US.</p> <p>IRIS has solicited analysis from over 20 western law firms in Russia on the draft Code. The comments will be provided to the drafters.</p> <p>IRIS-Russia director briefed Baker &amp; McKenzie, the largest law firm in Russia, and other western organizations on Part I of the Civil Code.</p> <p>IRIS-Russia director briefed ILG on issues in Part II of the draft Code.</p> <p>IRIS-Russia Director is drafting article for publication in Journal of High Arbitration Court and western journal.</p>
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<p><u>2. Secured Commercial Lending.</u></p> <p>a. Publication of proceedings of International Conference on Secured Commercial Lending in the CIS.</p> <p>c. Report on collateral law in Russia.</p>	<p>2</p> <p>2</p>	<p>EBRD and IRIS are preparing the Conference proceedings for spring publication.</p> <p>IRIS-Russia is preparing report on collateral law in Russia for inclusion in survey of collateral law in Central Europe, compiled by IRIS-Poland Project.</p>
<p><u>3. Uniform Commercial Code.</u></p> <p>a. Translation, Editing, Introductions, Publication.</p> <hr/> <p><u>4. Forums on Commercial Law and Economics.</u></p> <p>a. Conference on Resolution of Commercial Disputes between Russian and Foreign Partners. Co-sponsored by IRIS.</p>	<p>2</p> <p>1</p>	<p>IRIS, Research Center, and editing team completing all aspects of UCC production. Hope to publish by late spring.</p> <hr/> <p>IRIS-Russia Director delivered speech on "Protecting the Interests of the Foreign Client in Private and Public Arbitration Courts" to a large audience from the Russian and western legal and business community.</p>

<p>5. <u>Judicial Training</u></p> <p>a. Judicial Training in Commercial Law Follow-Up Activities.</p> <hr/>	<p>1</p>	<p>IRIS is examining possible in-country follow-up activities for judicial training.</p> <hr/>
<p>6. <u>Add'l Activities.</u></p> <p>a. International Lawyers Association.</p>	<p>2</p>	<p>Director is member in association of foreign lawyers. In charge of guest speakers committee. Serves on sub-committee on legal translations.</p>
<p>b. USAID Rule of Law Monthly Meeting.</p>	<p>2</p>	<p>IRIS hosts monthly meeting of USAID Rule of Law Contractors. Meets to discuss issues of common interest and concern. Participants include IRIS, ABA-CEELI, HIID, Urban Institute, ARD/Checchi.</p>
<p>c. US Government Rule of Law Briefing.</p>	<p>1</p>	<p>IRIS-Russia director addressed meeting of US government officials involved in rule of law issues in Moscow to discuss various IRIS activities, legal reform.</p>
<p>d. Conference on Collateral Law, Warsaw, Poland.</p>	<p>1</p>	<p>IRIS-Russia director attended conference in Poland on collateral law organized by IRIS-Poland. Brought two Russians who are drafting Law on Registration of Immovable Property so that they could benefit from exposure to western experts and examine Polish experience.</p>

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed

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(4) Action cancelled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
<p>1. <u>Civil Code</u></p> <p>a. Workshops on Part II of the Civil Code. Sections to be covered include banking, sales, franchising, leasing, among others.</p> <p>b. Briefing Papers on topics to be covered in May Workshop.</p> <p>c. Distribute commentaries from western law firms on Part II draft to Research Center.</p> <p>d. Article on new Civil Code.</p>	<p>May</p> <p>April</p> <p>April</p> <p>Spring-Summer</p>	<p>IRIS-Russia/IRIS Center</p> <p>IRIS-Russia</p> <p>IRIS-Russia</p> <p>IRIS-Russia</p>
<p>2. <u>Secured Commercial Lending.</u></p> <p>a. Publication of proceedings of Conference on Secured Commercial Lending.</p> <p>b. Report on Russian collateral law.</p>	<p>April</p> <p>April</p>	<p>IRIS/EBRD</p> <p>IRIS-Russia/IRIS-Poland</p>
<p>3. <u>UCC</u></p> <p>a. Finish all aspects of project. Publish.</p>	<p>Spring</p>	<p>IRIS-Russia/Research Center for Private Law</p>
<p>4. <u>Forums on Commercial Law and Economic.</u></p> <p>a. No events currently planned.</p>		

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<p>5. <u>Judicial Training</u></p> <p>a. Possible follow-up to US training program.</p>	<p>Spring</p>	<p>IRIS-Russia, AED</p>
<p>6. <u>Additional Activities.</u></p> <p>a. International Lawyers Group.</p> <p>b. USAID Rule of Law Contractors Monthly Meeting.</p>	<p>on-going</p> <p>on-going</p>	<p>International Lawyers Association.</p> <p>USAID Rule of Law contractors.</p>

B. Project Administration

Activities Planned for Reporting Quarter	Current Status	Explanations (Problems, steps to resolve, etc.)
Registration	2	Accreditation application approved by Russian Chamber of Commerce. Completion of process pending implementation of administrative system for handling tax payments, etc.
Open Russian Bank Account.	3	Will open upon completion of registration process.
Move into new offices.	1	Office move fully completed.
Install Satellite Line.	4	Present phone system deemed sufficient for current needs.
Hire Administrator/Accountant.	1, 3	New secretary/office manager hired to replace departing one. Decision on administrator-accountant postponed.
Hire Russian Lawyer, short term.	1, 3	Dutch lawyer, senior associate level, hired as consultant to work on Civil Code project. American lawyer, junior associate level, working as intern on Civil Code project. No Russian lawyers hired at this time.

Current Status Key:

- (1) Action Completed
- (2) Action in process
- (3) Action delayed
- (4) Action cancelled

Planned Activities for Next Quarter	Estimated Completion Date	Entity Responsible for Action
Accreditation.	May	IRIS-Russia/IRIS Center
Open Bank Account.	May	IRIS-Russia/IRIS Center
Phase-out Commercial Law I.	May	IRIS-Russia
Prepare for return of resident Director to US.	May-June	IRIS-Russia
Hire new program manager for Commercial Law II.	April	IRIS Center
Train new program manager. Transfer financial and administrative responsibilities to new manager and to managers of other IRIS-Russia projects in Moscow.	May	IRIS-Russia

3. Outstanding problems and issues and intended steps toward resolution

N.A.

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III. FINANCIAL DATA

To be Supplied.

IV. ATTACHMENTS

1. Civil Code
  - a. Introduction to Part II, Draft, and Table of Contents.
  - b. Part II, Draft, in Russian. (Not attached. Available upon request from IRIS-Russia or IRIS Center.)
  - b. Part II, Draft, in English. (Not attached. Available upon request from IRIS-Russia or IRIS Center.)
2. Secured Commercial Lending
  - a. Draft Introduction to Proceedings from Conference on Secured Commercial Lending, publication forthcoming.
3. Conference on Resolution of Commercial Disputes Between Russian and Foreign Partners.
  - a. Conference Program
4. Congressional Testimony
  - a. Excerpts from Statement of Thomas A. Dine, AA/ENI, USAID, Senate Subcommittee on Foreign Operations, 2/22/1995.

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THE CENTER FOR INSTITUTIONAL REFORM  
AND THE INFORMAL SECTOR

IRIS - RUSSIA PROJECT

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ЦЕНТР ПО ИНСТИТУЦИОНАЛЬНОМУ РЕФОРМИРОВАНИЮ  
И ИНФОРМАЛЬНОМУ СЕКТОРУ

IRIS - РОССИЙСКИЙ ПРОЕКТ

Лейбл Блуменфельд, Директор  
100118 Москва, Россия,  
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February 24, 1995

DRAFT CIVIL CODE OF THE RUSSIAN FEDERATION  
PART II

TABLE OF CONTENTS

30 March 1995

RUSSIAN CIVIL CODE, PART II

With the introduction of Part I of the Civil Code, the Russian Government is now focusing on drafting the second part, scheduled to be enacted by the end of the year.

Part I, the majority of which entered into force on January 1, 1995, contains the general provisions of civil legislation, with major sections on legal entities, ownership, and obligations. Part II will cover specialty areas of commercial and civil law, divided into four major sub-parts:

- (1) Individual Types of Obligations
- (2) Exclusive Rights (Intellectual Property)
- (3) Law of Inheritance (Succession or Wills and Estates)
- (4) Private International Law (Conflicts or Choice of Law)

The largest section, on Individual Types of Obligations, includes chapters on Sales and Purchase, Banking Transactions, Lease, Insurance, Personal Injury (or Torts), and Franchising, among many others.

President Yeltsin has authorized the Research Center for Private Law attached to the President of the Russian Federation to coordinate the drafting of the Civil Code. The Research Center has assembled a working group composed of some of Russia's best civil lawyers drawn from all branches of government. Organizations participating in the drafting project include the Supreme Arbitration Court, the Ministry of Justice, the State Duma and Federation Council, the International Commercial Arbitration Court of the Chamber of Commerce and Industry of the RF, Moscow State University's Law Faculty, the Institute of State and Law of the Russian Academy of Sciences, and the Institute of Legislative and Comparative Law under the Government of the RF.

With support from the United States Agency for International Development (USAID), the Center for Institutional Reform and the Informal Sector (IRIS), an affiliate of the University of Maryland, has been assisting and advising this working group as it has developed Parts I and II of the new Russian Civil Code.

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SECTION 4: Individual Types of Obligations

- Chapter 30 -- Purchase/Sale
  - 1. -- General Provisions
  - 2. -- Retail Purchase/Sale
  - 3. -- Supply
  - 4. -- Governmental Contract for Delivery of Goods for Governmental Purposes
  - 5. -- Procurement
  - 6. -- Energy Supply Contracts
  - 7. -- Sale of Enterprises
- Chapter 31 -- Barter
- Chapter 32 -- Gift
- Chapter 33 -- Life Estate (\*)
  - 1. -- General Provisions
  - 2. -- Rent for Indefinite Period of Time
  - 3. -- Lifelong Rent
  - 4. -- Maintenance for Life of Tenant and Heirs
- Chapter 34 -- Lease
  - 1. -- General Provisions
  - 2. -- Rent of Movable Property (short-term) (\*)
  - 3. -- Lease of Vehicles (\*)
  - 4. -- Lease of Enterprise
  - 5. -- Financial Lease (\*)
- Chapter 35 -- Residential Leasing (\*)
- Chapter 36 -- Use of Property without Compensation (\*)
- Chapter 37 -- Independent Work-Contract
  - 1. -- General Provisions
  - 2. -- Consumer Work-Contract
  - 3. -- Work-Contract for Construction
  - 4. -- Work-Contract for Fulfillment of Projects and Research
  - 5. -- Work-Contract for the Performance of Scientific Research and Experimental Design Work
  - 6. -- State Work-Contract

Chapter 38 -- Compensatable Services

Chapter 39 -- Carriage

IN THE UNITED STATES CONTACT:

Dr. DAVID FAGLSON, THE IRIS CENTER, 205 SOUTH BAY STREET, ANNAPOLIS, MD 21403

- Chapter 41 -- Loan and Credit
  - 1. -- Loan
  - 2. -- Credit
- Chapter 42 -- Bank Deposits
- Chapter 43 -- Bank Accounts
- Chapter 44 -- Settlement of Accounts
  - 1. -- General Provisions
  - 2. -- Payment Orders
  - 3. -- Letter of Credit (\*)
  - 4. -- Payments by Draft
  - 5. -- Payments by Check
- Chapter 45 -- Agency
- Chapter 46 -- Conducting Affairs of Another without Assignment
- Chapter 47 -- Commission
- Chapter 48 -- Trust
- Chapter 49 -- Franchising
- Chapter 50 -- Storage
  - 1. -- General Provisions
  - 2. -- Individual Types of Storage
  - 3. -- Warehousing
- Chapter 51 -- Insurance
- Chapter 52 -- Limited Partnership
- Chapter 53 -- Open Public Competition (\*)
- Chapter 54 -- Public Promise of Award (\*)
  - 1. -- General Provisions
  - 2. -- Particular Features Associated with Gambling
- Chapter 55 -- Obligations Arising as a Consequence of Causing Harm
  - 1. -- General Provisions
  - 2. -- Compensation for Harm Caused to Life and Health of Person
  - 3. -- Compensation for Harm Caused as a Consequence of Defects in Goods and Services (\*)
  - 4. -- Compensation for Moral Harm (\*)
- Chapter 56 -- Obligations Arising as Consequence of Unjust Enrichment (\*)

**SECTION 5: Exclusive Rights (Intellectual Property)**

- Chapter 57 -- General Provisions
- Chapter 58 -- Author's Rights (Copyright)
- Chapter 59 -- Neighboring Rights
- Chapter 60 -- Invention. Industrial Design
- Chapter 61 -- Secrets of Production. Defense from Unfair Competition
- Chapter 62 -- Rights to Achievements in Breeding
- Chapter 63 -- Means of Identifying Goods. Company Name. Trademark. Goods' Place of Origin

**SECTION 6: Law of Inheritance (\*)**

- Chapter 64 -- General Provisions
- Chapter 65 -- Inheritance by Will
- Chapter 66 -- Inheritance by Law
- Chapter 67 -- Acquisition of Inheritance

**SECTION 7: Private International Law**

- Chapter 68 -- General Provisions
- Chapter 69 -- Conflicts of Law

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 (\*) Not Yet Available in English

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DRAFT

INTERNATIONAL CONFERENCE ON SECURED COMMERCIAL LENDING  
IN THE COMMONWEALTH OF INDEPENDENT STATES

The International Conference on Secured Commercial Lending took place in Moscow at the Russian Supreme Arbitration Court in November 1994. During the Conference, leading experts in law and banking from the United States and Europe discussed the critical issue of secured commercial lending with jurists, parliamentarians, bankers, and entrepreneurs from Russia and the other countries in the Commonwealth of Independent States. The Conference was extremely timely, taking place shortly before the enactment of the new Russian Civil Code, which contains important provisions on secured transactions.

The Conference grew out of work the sponsoring organizations are undertaking to protect security interests and other property rights in both the Russian Federation and across the CIS. This protection is a vital precondition before lenders will extend financial credit to the newly emerging private sector. Currently, these property interests are not well protected in the former Soviet Union. For example, although Russia has fairly advanced law on secured transactions, it has few of the requisite institutions to implement a modern secured lending regime. Therefore, in addition to discussing the legal framework for secured lending, the Conference sought to outline the necessary institutions that the countries of the CIS must create in order to provide comfort to commercial lenders.

The Conference began with a delineation of the impediments to secured lending by leading jurists, judges, practicing lawyers, and bankers from Russia and the CIS. Afterwards, prominent Western experts described the elements required for the protection of secured interests in the US and Europe. Experts from the region and the West also examined related issues, such as insolvency, enforcement of judgments, and registration.

On the second day of the Conference, the participants applied this framework to a hypothetical business situation, which produced intense debate among the CIS participants about the appropriate framework for secured lending in their countries and provided an opportunity to apply the general discussion from day one to tangible business questions.

The proceedings from the Conference are reproduced in both English and Russian. This publication contains all remarks from the first day of the Conference, as well as substantial parts of the case study discussion on day two. The co-sponsors hope that their publication will both promote greater understanding of the issues involved and stimulate further debate about the means of building an effective secured commercial lending regime in the countries of the CIS.

# RESOLUTION of COMMERCIAL DISPUTES BETWEEN RUSSIAN and FOREIGN PARTNERS

30-31 January 1995

Academy of Finance Under the Government of the Russian Federation  
Leningradski Prospekt 55, Moscow



After three years of debate, the New Civil Code of the Russian Federation is due to come into effect from January 1995. Addressing key principles of Law of Ownership and Obligations, the code will provide fundamental legislation governing all market relations in the Russian Federation.

Of more urgent interest to foreign investors, however, is Part II of the Code, currently in Draft and due for approval by the Duma in 1995. In addition to legislation on specific contractual obligations, the Code

will address the application of Civil Laws of Foreign States and International Treaties, and will directly concern foreign Company Law and International Dispute resolution.

This timely seminar includes presentations from key figures of the Civil Code Drafting Commission. Senior Western lawyers practising in the Russian Federation will examine the likely implications for foreign investors and the protection of foreign interests. Any organisation with financial commitments in Russia should attend.

## PROGRAMME

### MONDAY 30 JANUARY

#### Morning Session

#### DEVELOPMENT OF PROTECTION OF RUSSIAN AND FOREIGN ENTREPRENEURS' RIGHTS IN LEGISLATION OF THE RUSSIAN FEDERATION

##### Speaker:

B Yakovlev, Chairman

Supreme Arbitration Court of the Russian Federation  
(Member of the Civil Code Drafting Commission)

#### GENERAL PROVISIONS OF NEW CIVIL CODE OF THE RUSSIAN FEDERATION

##### Speaker:

V Vitriansky, Deputy Chairman

Supreme Arbitration Court of the Russian Federation

#### FOREIGN LAWYERS' PERSPECTIVE ON THE NEW CIVIL CODE OF THE RUSSIAN FEDERATION

##### Speakers:

W Symons, Pepper, Hamilton & Schetz  
Academician W E Butler, White & Case

#### PROVISIONS OF PART II OF THE CIVIL CODE OF THE RUSSIAN FEDERATION REGARDING COMMERCIAL AGREEMENTS

##### Speaker:

A Mskovity, Deputy Director

Institute of Law and Comparative Legislation under the Government of the Russian Federation  
(Member of the Civil Code Drafting Commission)

#### Afternoon Session

#### RESOLUTION OF DISPUTES IN THE INTERNATIONAL COMMERCIAL ARBITRATION COURT OF THE CHAMBER OF COMMERCE AND INDUSTRY OF THE RUSSIAN FEDERATION, WITH REFERENCE TO THE NEW RULES OF THE COURT

##### Speaker:

A Komarov, Chairman

International Commercial Arbitration Court, Chamber of Commerce and Industry of the Russian Federation (Member of the Civil Code Drafting Commission)

#### PRACTICE OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

##### Speaker:

U Franka, Secretary General

Arbitration Institute of the Stockholm Chamber of Commerce

#### THE RESOLUTION OF INVESTMENT DISPUTES BETWEEN RUSSIAN AND FOREIGN PARTNERS

##### Speaker:

P Barneheim, Vice President

Union of Advocats of the Russian Federation

### TUESDAY 31 JANUARY

#### Morning Session

#### PRACTICE OF THE ARBITRATION COMMISSION OF THE MOSCOW INTERBANK CURRENCY EXCHANGE REGARDING BANKING DISPUTES

##### Speaker:

A Kostin, Chairman

Arbitration Commission of MICEX

#### RESOLUTION OF DISPUTES ON CONTRACTS OF PURCHASE BETWEEN RUSSIAN AND FOREIGN PARTNERS IN RUSSIA

##### Speaker:

M Rosenberg, Judge

International Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation

#### PROTECTING THE INTERESTS OF THE FOREIGN CLIENT IN PRIVATE AND PUBLIC ARBITRATION COURTS IN RUSSIA

##### Speakers:

L Blumenfeld, Director

Centre for Institutional Reform in the Informal Sector  
Academician W Butler, White & Case

#### Afternoon Session

#### PROBLEMS CONCERNING THE IMPLEMENTATION OF DECISIONS ADOPTED BY RUSSIAN ARBITRATION COURTS OUTSIDE THE RUSSIAN FEDERATION

##### Speaker:

L Lebedev, Chairman

Maritime Arbitration Commission of the Chamber of Commerce and Industry of the Russian Federation

#### ROUND TABLE DISCUSSION

#### COMMERCIAL DISPUTES: PRACTICE AND CONTROVERSIAL ISSUES

##### Moderators:

M Bedaev, Vice-President

Chamber of Commerce and Industry of the Russian Federation

M Komarov, Chairman

International Commercial Arbitration Court of the Chamber of Commerce and Industry of the Russian Federation

Reception and Close of Conference



# RESOLUTION of COMMERCIAL DISPUTES BETWEEN RUSSIAN and FOREIGN PARTNERS

organised in association with

International Commercial Arbitration Court of the Chamber of Commerce and Industry  
of the Russian Federation

Supreme Arbitration Court of the Russian Federation

IRIS Russia Project (Funded by USAID)

Russo-British Chamber of Commerce

Excerpts from

Statement of Thomas A. Dine  
Assistant Administrator for Europe and the New Independent States  
United States Agency for International Development

Subcommittee on Foreign Operations  
Committee on Appropriations  
United States Senate  
One-hundred-fourth Congress, First Session

February 22, 1995

...The new way of doing business in the NIS countries must also be codified into law. Thanks to USAID-funded legal assistance, modern commercial laws are being developed, drafted and passed into law, for example, in Russia and Kazakhstan.

On January 1, 1995, Part I of Russia's new Civil Code, containing basic business law provisions such as ownership, mortgages, corporations, contracts and obligations, went into effect. The next step in the process is assistance with the formulation of Part II, including laws on speciality contracts, intellectual property, inheritance, and international conflict of law. Tax reform is another related imperative.

But to be meaningful, commercial codes ultimately require reliable courts to enforce their provisions. USAID-sponsored experts are working on the development of appropriate judicial structures and the training of arbitration judges in Russia, Kazakhstan, and other NIS countries....

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