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Small and Medium  
Enterprise  
Development:  
A National  
Assessment of  
the Agroindustry  
Sector in  
Poland

Volume One

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**GEMINI**

**GROWTH and EQUITY through MICROENTERPRISE INVESTMENTS and INSTITUTIONS  
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# Small and Medium Enterprise Development: A National Assessment of the Agroindustry Sector of Poland

Volume One

by

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## PREFACE

In September 1997, at the request of the Government of Poland (GOP), the U.S. Agency for International Development entered into a contract with Development Alternatives, Inc. (DAI) to implement the Poland Small Business Project. The project is a component of the worldwide USAID-funded Growth and Equity through Microenterprise Investment and Institutions (GEMINI) Project managed by DAI.

The purpose of the Poland Small Business Project is to provide advisory assistance to the GOP to create and reform government policy to stimulate private sector formation and investment in small- and medium-scale enterprises (SMEs). GEMINI advisors work closely with and through the Cabinet Office of the Minister for Small Business Promotion in carrying out subsector research and analyses of the policy and investment constraints and opportunities affecting viable SME formation and expansion in Poland.

GEMINI advisors also work closely with private sector organizations and firms throughout Poland to identify constructive policy, legislative, and regulatory reform initiatives to be addressed by the GOP, and create a policy formation process in government that includes input and feedback from the emerging Polish private sector. The long-term objective of the project is to facilitate a sustainable environment for SME development. GEMINI pursues the achievement of this objective by fostering a partnership of shared risks and benefits between the GOP and the private sector to transform the former command economy of Poland into a private sector driven, competitive market economy.

This report on the agroindustry sector of Poland is one of several GEMINI assessments of subsectors of the economy analyzed from an SME perspective. This report presents findings, conclusions, and recommendations on agroindustry development for consideration and action by the GOP, the private sector, financial institutions, technical assistance agencies and donor organizations.

This assessment focuses primarily on the role of and opportunities for SME agribusiness formation and investment within the scope of restructuring specific agricultural commodity systems. Market development, agricultural policy, technical assistance, privatization, and investment constraints are identified, and action recommendations are presented to remove the barriers that impede the development of the agribusiness sector.

The most salient outcome of this assessment is the immediate opportunity for the GOP and the Polish and foreign private sector agribusiness community to pursue the restructuring and development of the oilseed sector in western and northwestern Poland. With modest policy reform effort and concerted action by government ministries and agencies, more than one million hectares of underutilized land can be returned to production, many state farms and oilseed processing plants can be viably privatized, and thousands of rural agricultural jobs can be saved and created. The scope for SME formation and expansion in this sector is indeed significant.

The challenge to government and the private sector is to seize the clear opportunity to upgrade and integrate the oilseed sector to produce high value-added edible oil for export, and to supply animal feed material to the domestic market. The experience gained by targeting integrated private sector agribusiness formation and investment will also demonstrate the potential for sound agricultural sector policy formation associated with technology transfer, technical assistance, and venture capital investment promotion in response to market-driven opportunities. The SME agribusiness sector will be the largest beneficiary in this process, given the demand for farm and processing plant input supplies and services.

Chapters Four through Seven of this report outline the potential scope for the development of the oilseed sector.

This target of opportunity will require uncommon cooperation between central government ministries and agencies and their *voivod* (provincial) and *gmina* (city) counterparts. Traditional administrative practices and political turf issues that bureaucratically impede internal government cooperation to achieve economically viable objectives are simply too costly to be continued. The national and local socioeconomic interest of Poland is the only sensible basis on which policy formation and direct government and private sector cooperation should be fostered and sustained. Internal government cooperation in the policy arena is essential to maximize Poland's comparative advantage and access to high value export markets such as edible oil.

Preparing a report of this magnitude requires considerable time, cooperation, and input from many people, companies, and institutions. Our sincere appreciation is offered to those named in Annex A of this report for their generous contribution to our field research process. The candid recommendations, information, and data provided by them is the empirical foundation on which this report is based.

We are especially grateful to Theresa Olko for her valuable input on state farms and the privatization process, and for recommending key persons contacted in the course of the GEMINI team's field research. Input and referrals provided by Wayne Halverson, Technoserve, Inc., and Mary Roberts Scott, Tom Rulland, and David Franzblau, Peace Corps, were also most helpful.

The field research effort was very ably directed by Debra Wahlberg. Her insight, tenacity, and ability to motivate her research team to accomplish the objectives of the assessment, and participate with them in many meetings throughout Poland, is largely the reason this assessment was effectively completed. Ms. Wahlberg also wrote and edited much of this report. The excellent subreports and field research notes of Tadeusz Peczek, Miroslaw Zielinski, Konrad Hryciuk, Gene Miller, Gary Kilmer, and Carol Finnegan are integrated within its scope, in accord with the research design and methodology. Their research and analysis contributed significantly to the findings presented in this report and the recommendations offered.

Special thanks is also offered to DAI's GEMINI/Poland support staff for their untiring efforts to organize and participate in the field research effort and in the preparation of this report. They include Magda Wajda and Jerzy Zielinski, field research assistants and translators, and Malgorzata Kulminska, responsible for logistic support and travel arrangements and word processing services.

Last but not least are our U.S.-based colleagues at DAI headquarters in Bethesda, and A.I.D./Washington, who provided timely and effective support to implement this assessment. Matthew Gamsler, Corinne Rothblum, and Wes Baker at DAI and Elizabeth Rhyne and Jack Slattery at A.I.D. were significant participants in this endeavor.

George L. Metcalfe

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**LIST OF ACRONYMS**

ARR	Agency for Agricultural Markets Agencja Rynku Rolnego
AWR	Agricultural Property Agency Agencja Własności Rolnej Skarbu Państwa
ASTM	American Society for Testing Materials
BGŻ	Bank for Food Economy Bank Gospodarki Żywnościowej
B.I.S.E	Bank for Socio-Economic Initiatives Bank Inicjatyw Społeczno-Ekonomicznych
BAAS	Business Analysis and Advisory Services Unit
CSI	Central Standardization Institute Centralny Inspektorat Sanitarny
EBRD	European Bank for Reconstruction and Development
ECC	Enterprise Credit Corporation
EWA	Enterprise for Port Elevator Services Przedsiębiorstwo Usług Portowych Elewator "EWA"
EPSC	Enterprise Promotion and Support Center
EVCC	Enterprise Venture Capital Corporation
EC	European Community
FSC	Farm Service Company
FOSFA	Federation of Oils, Seeds and Fats
F.I.S.E	Foundation for Socio-Economic Initiatives Fundacja Inicjatyw Społeczno-Ekonomicznych
GAFA	Grain and Feed Association
GBW	Gospodarczy Bank Wielkopolski
GOP	Government of Poland

GEMINI	Growth and Equity through Microenterprise Investments and Institutions
IN	Grain Inspection: Inspekcja Nasienna
IHAR	Institute for Plant Breeding and Acclimatization Instytut Hodowli i Aklimatyzacji Roślin
IFIA	International Federation of Inspection Agencies
KBN	Committee for Scientific Research Komitet Badań Naukowych
MoFC	Ministry of Foreign Cooperation
MOP	Ministry of Privatization
ODR	Regional Agricultural Extension Service Ośrodek Doradztwa Rolniczego
PGR	State Farm Państwowe Gospodarstwo Rolne
PZZ	State Grain Enterprise Państwowe Zakłady Zbożowe
SME	Small and Medium Enterprise
SBAC	Small Business Advisory Center
SANEPID	Hygiene and Epidemic Control Stations Stacja Sanitarno-Epidemiologiczna
SChR	Agriculture - Chemical Stations Stacje Chemiczno-Rolnicze
SIPPAP	State Inspection of the Purchase and Processing of Agrarian Products
SME	Small and Medium Enterprise
SOE	State-Owned Enterprise
TR	Agricultural Technical School Technikum Rolnicze
T.I.S.E	Company for Socio-Economic Investments Towarzystwo Inwestycji Społeczno-Ekonomicznych

<b>USAID</b>	<b>U.S. Agency for International Development</b>
<b>USD</b>	<b>US Dollar</b>
<b>VOCA</b>	<b>Volunteers in Overseas Cooperative Assistance</b>
<b>WIS</b>	<b>Veterinary Sanitary Inspection Weterynaryjna Inspekcja Sanitarna</b>
<b>WSKiOR</b>	<b>Voivodship Stations of Quarantine and Plant Protection Wojewódzkie Stacje Kwarantanny i Ochrony Roślin</b>

## **EXECUTIVE SUMMARY**

### **PURPOSE AND OBJECTIVES OF THE ASSESSMENT**

The purpose of this assessment under the Growth and Equity through Microenterprise Investments and Institutions (GEMINI) Project is to identify the constraints to and opportunities for increased small and medium enterprise (SME) investment and participation in the agroindustry sector in Poland. The objectives of the analysis of the sector are to:

- Examine the legal, regulatory, and economic factors and civil administrative procedures that positively and negatively affect the development and operation of small and medium agribusinesses;
- Document the major empirical research findings and results of analysis affecting agribusiness formation and investment; and
- Present conclusions and recommendations that focus on the ways and means to increase private sector participation and expansion in the agroindustry sector.

This report presents solid opportunities for state-owned enterprise (SOE) transformation and SME agribusiness formation and investment promotion, coupled with effective local and foreign advisory services and agroindustry-promotion interventions. The opportunities identified, however, require and warrant a positive and comprehensive policy framework and action plan to foster and sustain competitive market development driven by viable and expanding private sector agribusinesses. The potential benefits of pragmatic policy formation and action are illustrated in Chapters Four through Seven of this report, which focus on an analysis of the oilseed commodity system in Poland.

The analysis of the oilseed sector demonstrates that constraints and opportunities within the agribusiness sector can be clearly delineated and addressed by the Government of Poland (GOP), donors, private sector firms, and SOEs. A commodity systems approach to agribusiness provides a basis to identify viable market development opportunities and business linkages to be established among input suppliers, growers, processors, and distributors of high value-added products and services.

Such analysis is essential to guide policy formation and related legislative, regulatory, and administrative change initiatives. As the assessment of the oilseed sector confirms, there is a clear need to integrate policy making with investment promotion programs and market research activities of government to stimulate agribusiness formation and private sector investment. At the present time, however, agroindustry research and analysis is largely nonexistent in Poland. Thus the GOP and donors may find the results of this analysis instructive with respect to fostering more integrated and business-oriented agricultural sector research within the scope of their SME technical assistance and financing programs.

## MAJOR FINDINGS

The agroindustry sector is dominated by state ownership, management, and control of the factors of production, including processing and marketing enterprises, raw material suppliers, and credit institutions that finance agribusiness activities. No cohesive government policy exists to transform the agricultural sector based on commodity market realities and private sector investment requirements.

SME agribusinesses exist but are not organized to pursue pragmatic business integration, investment, and expansion initiatives. Thus there is significant need and opportunity to develop private sector organizations in agroindustry to identify new food and fiber markets, create linkages between SMEs and SOEs and state farms targeted for privatization. In addition, significant scope exists to increase investment in agribusiness by promoting joint venture formation between Polish entrepreneurs and Polish and foreign agribusiness companies. Foreign partners represent the most immediate access to international commodity markets, efficient agribusiness technologies and systems, and sound agribusiness management practices. The absence of government policy based on commodity systems research largely precludes increased agribusiness formation and private sector investment at this time in Poland.

The dearth of private sector organizations in agroindustry results in little or no input from SMEs to the government to foster positive policy formation, simplified regulations and competitive tax incentives conducive to SME agribusiness formation and expansion. GOP policy and support initiatives focus primarily on price supports and commodity trade control from a farm producer and food security viewpoint, in addition to sustaining or attempting to privatize economically weak state farms and SOE agribusiness companies in a slow and costly legalistic and bureaucratic manner. Only limited analysis of market development and private sector agribusiness investment opportunities are currently undertaken by the government. Indeed it is difficult to clearly identify governmental responsibility for and interest in the agroindustry sector. The agricultural economy is largely viewed to be a farm production matter exclusive of agribusiness activities.

The GOP, through a variety of ministries, statutory bodies, and SOEs, competes directly with the private sector in agroindustry markets, while simultaneously creating disincentives and sustaining regulatory and bureaucratic practices that diminish SME participation in commodity sectors. This is especially true in the areas of domestic and export commodity trading, and provision for effective business advisory and financing services.

The GOP must refocus agricultural policy to address pricing that is market demand driven and investment promotion policies to stimulate private sector agribusiness expansion based on input and output contractual linkages with farm producers. Current farm production support policies and state interventions in the marketplace seriously impede the growth of a viable and dynamic agroindustry sector. Increasingly significant social and economic costs will be the result of sustaining these policies and market interventions. These costs are exemplified by rapidly increasing rural unemployment, underutilized land and physical plant assets, loss of tax revenue, export of low value-added commodities, increased importation of processed agricultural products, and decreasing private investment in the agricultural sector.

Privatization of SOEs and state farms continues to be viewed to be the foundation on which efficient private sector agribusiness will be built. Although privatization may enable SMEs to increase their market access and help create linkages between SMEs and larger-scale agribusinesses, privatization in itself will not result in significant new private sector investment, SME formation, and rural

employment in the agroindustry sector. This report confirms that removing market distortions caused by price and commodity trade controls will stimulate greater private sector agribusiness formation, employment, and investment than is possible by continuing to focus primarily on privatization as the key mechanism for agricultural sector restructuring.

The GOP currently perceives the sector in terms of the drain on the state treasury by SOE agribusinesses and state farms and the sector's diminishing ability to provide and sustain employment and supply low cost food and fiber products to the population. The GEMINI field team found little evidence that the agricultural sector, including agroindustry, is understood to be a potentially major sector of opportunity to help Poland viably enter the international market economy.

In the medium term, Poland enjoys potentially significant comparative advantage in several agribusiness commodity sectors (edible oil, livestock feed, seed, and poultry and some fruit and orchard crops) if analyzed, integrated, and promoted in a sharply focused manner that is competitive and market driven. But policies and programs to make agriculture a key player in private sector business formation through agroindustry development is not being addressed as a vital component of Poland's economic restructuring. Sustained incentives and services for domestic and foreign investors, including venture capital investment and trade financing mechanisms and other nontraditional banking financial services, are vitally needed.

Thus a viable agricultural investment promotion policy must include agroindustry development in its scope to correct the current policy, regulatory, and civil administration constraints presented in this assessment.

The key constraints identified include the following:

- Absence of a policy that recognizes and fosters private sector agribusiness formation and investment;
- Lack of focus on agricultural commodity systems research to identify and promote much-needed vertical and horizontal linkages between private sector and SOE agribusinesses and farm producers;
- Lack of economic research programs and data focused on commodity markets, value-added processing, SME agribusiness distribution and service opportunities to test and establish new and expanded domestic and international markets for Polish food and fiber products;
- SOE and state farm privatization efforts based on achieving limited legal and administrative objectives to generate or save state revenue, rather than on economic analyses to identify and create viable private sector investment, production, and employment opportunities;
- Inadequate provision for agribusiness-oriented technical assistance and financial services, dissemination of efficient technologies, firm-level financial and market planning, and management training;
- Inadequate investment incentives to stimulate risk-oriented agribusiness capitalization and promotion of joint ventures among Polish entrepreneurs and Polish and foreign agribusiness firms;

- Excessive and inefficient centralization of the policy implementation process, particularly in the area of privatization, with limited decision making authority being delegated to *voivods* and regional privatization offices;
- Continued formation and expansion of state-owned businesses at the national, regional, and local levels, including agribusiness processing, farm input supply, and distribution and trading companies that compete unfairly with the private agribusiness sector in capital, product, and service markets; and
- Phytosanitary and processed food and fiber standards and export regulations and procedures that do not reflect international market practices and standards, and whose enforcement unnecessarily increase the costs of agribusiness operations in addition to the costs of the GOP's administration of agricultural sector controls.

### TECHNICAL ASSISTANCE SUPPORT

The international donor community and the government have channelled a significant amount of funding to create and support Small Business Advisory Centers (SBACs), and government-related foundations and budgetary units that manage and assist these centers. Annex D to this report assesses SBACs. The work of one Polish SBAC assisted by Technoserve, Inc., an American private voluntary agency funded by USAID, is analyzed in depth to illustrate how SBACs can play a major role in agribusiness development in Poland.

SBACs can provide important services to private businesses in the agroindustry sector by upgrading the technical and management skills of local businesses and assisting them to raise capital and develop their markets. SBACs can also serve as important catalysts to effect formal collaboration between private businesses and local and regional governments regarding the policy and regulatory constraints that agribusinesses encounter. Collaboration should also include efforts to organize and involve private sector organizations and advisory centers in regional and national policy formation and reform to more effectively foster competitive market development and promote private sector investment in the agroindustry sector.

The GOP should take an inventory of services currently provided to the SME agroindustry sector that are financed by the donor community and by the state budget. To the extent possible, the government should advocate private sector firms and nongovernmental agencies providing business advisory services to SMEs, including the privatization of government-sponsored small business incubators. Business advisory services supported by donors should be assessed to determine if the quality of services offered are adequate and appropriate for the SME community served. Specialized product and market development and technical services should be encouraged, in addition to mergers and formalized collaboration among many of the centers with limited staffs and funds in the same geographic location. The cost effectiveness and quality of services provided to SMEs would be enhanced by implementing these recommendations.

An evaluation of government-funded agricultural research centers should be carried out to identify components of their work that should be privatized and commercialized. This includes certified and hybrid seed multiplication; soil testing; and the manufacturing of quality control, processing, and farm equipment. Government-funded research resulting in agribusiness products for private sector

manufacturing should command royalties being paid to the government to meet the ongoing costs of government-sponsored research.

## CONCLUSIONS

Based on the analysis of the findings of the assessment, the following conclusions may be drawn:

1. The expansion of the SME agribusiness sector is impeded by the lack of coherent government policy that fosters competitive market development and promotes private sector investment. This is because of the continuation of legal, regulatory, and administrative systems and practices established primarily to serve the objectives of a centrally planned economy. These legal and bureaucratic traditions are at odds with, and no longer relevant to, the requirements for the development and expansion of efficient private sector businesses in a competitive market environment. Paramount among these are costly and ineffective food security policies and government price controls and related commodity export market controls and SOE interventions.
2. The absence of open communication and collaboration between the GOP and the agroindustry private sector diminishes sound policy formation essential to the restructuring of the agricultural sector. This is in part because of the relatively few and poorly organized private sector agribusiness-oriented groups that currently exist, and their limited efforts to represent private sector interests. The notion, however, that the government should seek input from the private sector is a new concept for both the GOP and for the private sector. Until the GOP and the private sector recognize and accept the need for private sector input to policy formation, the GOP may continue to develop inappropriate supply-driven and market-intervention policies, without regard for the need to create an environment conducive to SME formation and investment. This relationship is especially important to generate the data needed for sound economic analysis to guide policy formation, based on market and financial realities affecting the agroindustry and farming sectors.
3. The GOP tends to address constraints and opportunities in the economy through a combination of taxation and subsidies that foster inefficient resource allocations. This is especially the case in the agricultural sector, focused as the government is on farm price supports and direct and indirect subsidies favorable to SOEs, including the continued subsidized financing of SOE agribusinesses that includes privileged access to credit. There is little evidence of economic analyses being carried out on the impact of these policies and actions on private sector SME formation and investment. This narrowly focused and often arbitrary policy formation process and related legislation, as well as government intervention in the agricultural market, are the most serious barriers to agribusiness development in Poland. In addition, the need for overall reform and simplification of Polish law to create an environment favorable to the private sector in general and the SME agribusiness sector in particular remains a major issue to be addressed (see Annex E presented in Volume Two of this report) by the GOP.
4. The GOP inconsistently delegates policy implementation decisions to its regional representatives. There is also a significant lack of positive interaction between central and local government offices. Policy is established at the center, and local representatives are directed to implement policy and enforce relevant regulations with little regard for the

administrative capacity to do so. The GOP has invested significant resources to train its local and regional government representatives. The central government should encourage them to be private sector advocates by providing feedback on the impact of policy on private businesses in their areas, and enable them to make input on policies affecting SMEs. A process should also be implemented to consider recommendations to modify central government policy and its implementation to enhance viable agricultural and agroindustry sector development in the highly diversified agricultural economy of Poland.

5. The financial sector in Poland is often unable or frequently unwilling to provide debt and equity capital to the overwhelming majority of small and medium agribusinesses that require financing. High interest rates and collateral requirements are beyond the capability of most entrepreneurs. Donor-financed credit programs are largely inaccessible to most of the agroindustry SMEs because of minimum loan amounts and conditions, in addition to interest rates and collateral requirements. Nonbanking financial services are limited by legal constraints and the lack of financing mechanisms and instruments normally available to businesses in Europe and elsewhere.
6. Donor and GOP-supported technical and financing assistance for SMEs is often provided without an evaluation of policy and regulatory constraints affecting SMEs. In addition, such assistance often targets depressed geographic areas. Much more assistance should be directed to SMEs operating in viable product and service markets irrespective of their geographic location. With respect to technical assistance, many cities have more than one SBAC providing similar services, with neither the donors nor the advisory centers being aware of the existence and capability of other SBACs. Specialization and collaboration between SBACs is not fostered to strengthen the quality of service offered to SMEs. The sustainability of SBACs is also a major issue, and many SBACs (and incubators) are and will remain dependent on GOP and donor support for the foreseeable future.
7. The government and private sector organizations should foster the creation of a regional or a national association of advisory centers to enable them to more effectively assist member SMEs and ultimately create a private sector-supported market for their services. Such associations should also be retained by the government to analyze market and economic conditions affecting SMEs. The results of such analyses could contribute to policy formation by identifying viable opportunities to promote investment in and the expansion of the SME sector.

## **RECOMMENDATIONS**

1. GEMINI recommends that the issues referred to in the findings and conclusions of this report be addressed by the Minister for Small Business Promotion by establishing an SME agribusiness development task force to remove the constraints that impede the development of the agroindustry sector. The minister should also develop a positive and proactive SME agribusiness advocacy and promotion process in collaboration with the private sector and the Ministries of Agriculture, Industry and Trade, Privatization, Labor, and Social Welfare and other central and local government entities and the foreign assistance community concerned with the transformation of the agricultural sector.
2. Technical and economic research advisors should be provided on an ongoing basis to the Cabinet Office of the Minister to help establish and use the proposed SME agribusiness

development task force to establish agroindustry policy guidelines and action plans to stimulate SME agribusiness development. Such plans should be designed to remove the constraints and capitalize on opportunities, such as those presented in this report, based on systematic and sustained agroindustry and commodity systems research.

3. In collaboration with local and regional government representatives and members of the SME agribusiness sector, ongoing workshops should be convened by the minister and the SME agribusiness development task force throughout Poland to develop, explain, and implement the policy, technical assistance, and agribusiness development plans resulting from agroindustry and commodity systems research and analyses, including the opportunities identified and proposed in this report.

## CHAPTER ONE

### INTRODUCTION

#### AGROINDUSTRY IN POLAND

Since Poland began its transition in 1989 from a command economy to a market economy, the agroindustrial sector has experienced major upheavals. Previously defined roles between state-owned processing and marketing companies, which provided linkages between private and state farms, cooperatives, and the consumer, are crumbling. A strong private sector has not yet emerged to fill the void left by the failing state-owned enterprise (SOE) sector, either in processing or in marketing. The Government of Poland (GOP) has not addressed the status of the cooperatives in the market economy — that is, can the cooperatives privatize like other SOEs, or will the cooperatives have to liquidate and forfeit a major portion of their assets to the government. The emerging private sector continues to operate in an ever-changing and uncertain policy environment, with little or no access to financial resources for investment.

The GOP has adopted a "big is bad" policy in its privatization of the state farms. To rectify the political wrongs of the previous system, a significant effort is being made to redistribute the land in small parcels to as many private farmers as possible. Although politically palatable, this policy could bankrupt any hope Poland may have to compete effectively in the international marketplace in the fresh and value-added processed foods market, as it may be difficult to attain sufficient quantities of agricultural production on an economically efficient scale.

The GOP has a public policy of encouraging foreign investment. In practice, however, the obstacles an investor must overcome to begin operations — whether dealing with customs authorities who are unwilling to accept government duty exemptions provided to the investor, getting the necessary approvals to purchase land (particularly if the investor is German), the ever-changing tax structure, an inadequate telecommunications network, or a banking system that at best is archaic — significantly deter outside investment. This is particularly important because there are a number of potential investment locations in Eastern Europe, and a prospective investor will look for the best deal.

#### ASSESSMENT RATIONALE

The importance of the agroindustrial sector to the national economy is evident. In 1990, agroindustry contributed 17.6 percent to the GNP.<sup>1</sup> In the same year, agroindustry provided employment for 29.8 percent of the population.<sup>2</sup> Not included in any of the official figures is the significant number of people employed in agroindustry in the informal sector, particularly in domestic and cross-border trade. In 1990, Poland relied on its own agricultural sector for 87 percent of its food consumption, and

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<sup>1</sup> Main Bureau of Statistics, *Agriculture and Food Economy*, 1986-1990, p. 2.

<sup>2</sup> *Ibid*, p. 3.

43 percent of the country's consumer goods were agricultural products and foodstuffs.<sup>3</sup> Between 1989 and 1990, Poland's exports of agricultural products and foodstuffs increased by 35 percent.<sup>4</sup> In 1990, agricultural products and foodstuffs accounted for 15.5 percent of total Polish exports.<sup>5</sup>

The fact that agroindustry is a significant part of the Polish economy indicates that it offers a major opportunity for the growth of new small and medium enterprises (SMEs) in the areas of food processing, handling, storage, distribution, and trade. As the economy continues to become more market oriented, and the monopolistic role of the SOEs is eliminated, some group must fill the void. It is the development of new SMEs that will accomplish this. This complements the GOP's privatization program that is dividing the activities of the huge processing, marketing, and distribution SOEs into smaller companies that undertake discreet activities. This is not to say that the primary development of the SME will be a direct result of SOEs that have been privatized. It does mean, however, that as the once-protected SOEs are either eliminated because of poor financial conditions, or are privatized and are forced to compete in a market economy, there will be easier access and fair competition for new private businesses that choose to enter the marketplace.

Given the emerging role of the SME sector, and the importance of agroindustry to the economy, it is necessary for the GOP to develop a proactive policy that addresses the agroindustrial SME sector. The linkages that once existed in production, marketing, and distribution among the SOEs, state farms, cooperatives, and private farmers are breaking apart. Businesses that are emerging in the new economy are uncertain about their roles, because in the past the government managed everything. Few choices were made by the participants in the former command economy.

It is now up to the emerging private sector to provide the food production, marketing, and distribution services once provided by the state sector. Because the private sector and its role in the economy is new, there is fear and uncertainty. It is therefore necessary for the GOP to provide the appropriate policy, legislative, and administrative environment to assist the private sector in its new role. Of course, the GOP also finds itself in a new position, as in the past the population was in place to serve it, rather than the government serving the people.

The only way in which the private sector will be able to successfully participate is if it has the support of the GOP. As Poland continues to integrate into the international economy, it will find itself in an increasingly isolated position in world trade if it does not have policies in place that enable the Polish private agroindustrial sector to compete effectively with other countries. This is something the country cannot afford. Therefore, the GOP must develop a comprehensive agribusiness development policy that outlines the needs of the private sector, and identifies what the government must do in order for the private sector to succeed. This is the rationale for undertaking this Agroindustry Sector Assessment.

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<sup>3</sup> *Business Opportunities in Poland — A Guide to Agricultural Ventures*, Econolynx International Ltd., Ottawa, Canada, March 1992, p. 19.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

## SCOPE OF RESEARCH AND ANALYSIS

This assessment was carried out over a three-month period, commencing in August 1992. Initial interviews were conducted in and around Warsaw with officials from a several private and public sector entities. Two, two-week field visits took place in 17 voivodships and in 29 cities. Interviews were conducted with more than 160 people, ranging from officials from central ministry offices in Warsaw; officials in regional ministry offices; private farmers; state-owned processing and marketing companies; private food processors; officials in the *voivod* (provincial) offices responsible for agricultural development, economic development, and privatization; *gmina* (city) officials; members of cooperatives; workers council representatives; state farms; private foundations; banks and other financial institutions. A complete list of people interviewed is contained in Annex A in Volume Two of this report. A complete bibliography outlining secondary source material is contained in Annex C.

## CHAPTER TWO

### THE AGROINDUSTRY ENVIRONMENT

#### THE AGRIBUSINESS SECTOR

A variety of GOP statutory bodies, ministries, and SOEs are part of the Polish agroindustrial environment. The roles of the entities are varied, and include, among other activities, production and marketing, policy making and regulatory responsibilities, financing, and market intervention.

#### Government of Poland and State-Owned Enterprise Agribusiness Structure

The Agency for Agricultural Markets (Agencja Rynku Rolnego [ARR]) was established by an Act of Parliament in 1990 (see Annex F in Volume Two of this report). The Agency reports directly to the Prime Minister. Its purpose is to serve as an intervention mechanism for the GOP to stabilize the market for agricultural products and to protect the revenue earned by the agricultural sector. It accomplishes this through a variety of mechanisms.

The Agency is authorized to purchase surplus domestic agricultural product if it determines that allowing the surplus to remain on the market would depress the price of the commodity significantly enough to harm the domestic producers. The Agency can also import agricultural commodities if domestic production is such that ARR believes consumers will have to pay exorbitant prices for the local product.

ARR determines whether market intervention activities will be necessary through its market forecasting activities of specified agricultural commodities. In response to its forecasts, the Agency is then in a position to determine whether it should act. It makes proposals to the government to shape policy regarding domestic pricing mechanisms in agricultural production and foreign trade. The Agency can also issue credit guaranties.

The Agency is funded partly by the state budget, but it is also permitted to retain surplus financial resources that it receives from the economic activities and trade in which it engages. ARR is now responsible for, and can use, the government grain storage warehouses to store excess domestic product if the Agency believes this is in the interest of producers and consumers.

The Ministry of Agriculture serves primarily as an information gathering agency, and coordinates technical and advisory services, foreign assistance, and other services that the GOP provides to the agricultural sector. In September 1992, the GOP produced a policy paper, "Chances for the Countryside and Agriculture." This paper set out a loose framework for the role of agriculture in the Polish economy, but did little to develop a strategy by which agriculture and the agribusiness sector would be enabled to contribute to it (see Annex F).

The Agricultural Property Agency of the State Treasury (Agencja Własności Rolnej Skarbu Państwa [AWR]) was established by an Act of Parliament in October 1991 (see Annex F) and began operations in January 1992. The purpose of the Agency is to assume the assets of the state farming

enterprises (Państwowe Gospodarstwo Rolne [PGRs]) and real estate of the State Land Fund for restructuring and privatization, either through sale or lease. If the land cannot be disposed of by the AWR, it will remain in the inventory of the State Treasury and be managed by the Agency. The AWR reports to the Prime Minister through its president, who is appointed by the Prime Minister in consultation with the Minister of Agriculture and Food Economy and with the Minister of Privatization.

By the end of 1993, the AWR is expected to take over 1,495 PGRs, which have approximately 3.1 million hectares of arable land, and approximately 700,000 hectares of arable land that previously belonged to the State Land Fund. AWR is authorized to assume ownership of the property to hasten the process of returning land owned by the government to the private sector.

Once a PGR has been transferred to the AWR, the AWR begins the process of privatization by conducting an inventory and valuation of the PGR's assets. When this has been completed, the property is advertised for sale or lease in the local press (and the national press, depending on the size of the PGR.) Proposals are submitted to the regional AWR office (14 throughout the country) where the property is located. The bids are opened by an independent agent, and reviewed by the regional AWR office.

The PGR can be leased or sold, in whole or in part. Preference is given to proposals submitted by companies that have been established by former employees of the PGR. Foreigners can submit proposals for the leasing or purchasing of the PGRs. They must receive permission from the Minister of Agriculture to lease property. If a foreigner desires to purchase land, permission is also required from the Minister of the Interior.

In September 1990, the GOP established the Ministry of Privatization to transfer the assets of approximately 9,000 SOEs to private ownership. The Ministry monitors and controls the process of privatization. Its work is to aid sectoral restructuring while also promoting small business development<sup>6</sup> (see Annex F).

The primary responsibilities of the Ministry of Privatization are to:

- Determine state policy concerning privatization;
- Carry out its work under the Privatization Law;
- Determine foreign investment policy in conjunction with the Ministry of Economic Cooperation;
- Monitor the current status of the privatization process;
- Work with trade unions and other groups interested in developing private enterprise within the privatization process; and
- Develop training in privatization activities.<sup>7</sup>

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<sup>6</sup> *Information Guide to the Ministry of Privatization*, Ministry of Privatization, Warsaw, 1991, p. 5.

<sup>7</sup> *Ibid*, p. 14.

The exact number of enterprises to be privatized is unknown. The Ministry envisioned privatizing 8,000 enterprises within the first three years of its activities.<sup>8</sup> It has regional offices in 14 *voivods*.

Privatization can be initiated by the founding body, by the enterprise, or by the Prime Minister. The majority of enterprises that have been privatized to date have utilized the liquidation method of privatization. Some of these have taken place under Article 37 of the Privatization Law. (This is the most likely route to privatize a small- to medium-sized SOE if it were in good financial standing.) Under Article 37, the assets of the SOE, in whole or in part, are sold or leased to a new set of owners. The old enterprise is eliminated from the registry of SOEs. Employees are able to form new companies, if they choose, and obtain the assets under lease or purchase terms. Local investors may also obtain permission to use the lease or purchase option, particularly if they are forming a new enterprise with some of the former employees. Foreign investors can only opt for the outright purchase of the assets.

The cooperative sector has served as an important marketing link between private farmers, member cooperatives, and the SOE processing sector. Of the 18.7 million hectares of arable land, agricultural cooperatives farm almost 700,000 hectares, or 3.7 percent of this.<sup>9</sup> In addition to agricultural cooperatives, there are production and employee cooperatives.

Many private farmers were required to deliver their products to a local cooperative that served as a collection point for individual area farmers. The cooperative might process the product, or it would simply transport the gathered product to the appropriate SOE for processing and distribution. Cooperatives were told by the SOEs what to provide in the way of inputs for the SOE.

Cooperatives established in the command economy were not fashioned along western models. Cooperatives were established by the state to provide inputs for the SOE sector. Many farmers were ordered to become members and "contribute" land or machinery to the cooperative. In addition to what they were required to provide to the cooperatives, many farmers continued, to the extent possible, to produce additional agricultural products to sell privately. As a result of this policy, the farmers had little interest in the welfare of the cooperative. As Poland has moved to a market economy, the cooperative sector has suffered as a result of the former directives.

In addition to "member" cooperatives, there are cooperatives that are employee cooperatives, in addition to cooperatives that include members and employees as the "owners." The present legal structure governing member and employee rights often causes management conflicts because of the conflicting interests of members and employees. These conflicts have been detrimental to the role that the cooperative sector could play in the agroindustrial sector.

The SOE sector in agroindustry has traditionally involved activities including production of farm and food-processing inputs, processing of raw and semifinished food and agroindustrial products, distribution of products to the consumer, and trading and storage of processed and nonprocessed commodities. The SOE sector has provided the traditional linkages between the grower and the processor and the marketplace. Under the command economy, private farmers, state farms, cooperatives, and other parts of the SOE sector served to satisfy the requirements of the SOE processing sector.

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<sup>8</sup> *Ibid*, p. 5.

<sup>9</sup> *Business Opportunities in Poland -- A Guide to Agricultural Ventures*, Econolynx International Ltd., Ottawa, Canada, March 1992, p. 15.

Some of the largest SOEs are in the agroindustrial sector, including Państwowe Zakłady Zbożowe (Państwowe Zakłady Zbożowe [PZZ]), which is the State Grain Enterprise. It is the largest trader and warehouse of grains in Poland. Rolimpex is another large SOE that is involved in a number of activities in agroindustry, including distribution and trading of agricultural commodities, domestically and internationally.

State farms (PGRs) were established under the command economy to grow agricultural inputs for the SOE processing sector. The PGRs are concentrated more heavily in the northwest of Poland. As a result, a significant number of the 2.7 million private farms are located in the eastern and southeastern sections of the country.

In 1990, PGRs employed 400,000 people, which represented 3.5 percent of total employment.<sup>10</sup> The farms accounted for 25 percent of total arable land.<sup>11</sup> Although PGRs account for a relatively small portion of farm production, in the past they provided a convenient means for the state to ensure that large volumes of basic grain crops would be grown to assist the country in its food self-sufficiency, and to provide specified quantities of processing inputs for the SOE processing sector.

### Sources of Agribusiness Financing

A variety of sources of financing are available to the agroindustrial sector. CARESBAC-Polska was established in 1991 to focus on the financial and business needs of Polish private SMEs. Its primary function is to provide risk capital financing to existing enterprises that demonstrate a high potential for success and are engaged in economic activities of high priority to the Polish economy (see Annex F).

CARESBAC does not provide bank credit financing. It provides long-term risk capital in the forms of equity and quasi-equity investment instruments, equity options, preferred convertible stock, debt convertible to equity, and lease-financing arrangements, among others. Of the current portfolio of five projects, three are in agribusiness. The outstanding portfolio is 9 billion zlotys.

The Polish American Enterprise Fund was established in 1990 to support private sector initiatives in Poland after communism ended. The Fund provides equity financing through the Enterprise Venture Capital Corporation (EVCC), and loan financing through the Enterprise Credit Corporation (ECC). The ECC has established lending windows with nine banks in several voivodships. These branches have also established subwindows throughout the country (see Annex F).

At the end of August 1992, approximately 1,300 loans had been made by the ECC, totaling US \$29 million, and approximately 400 new jobs have been created. Of the 1,300 loans, approximately 15 percent are in agroindustry. The EVCC had participated in 13 projects, with the average project costing approximately US \$200,000.

The Company for Socio-Economic Investments (Towarzystwo Inwestycji Społeczno-Ekonomicznych [T.I.S.E.]) was established in 1991 to provide investment capital to new or expanding small businesses. It generally takes a minority stock position, and sells its shares back to the firm once

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<sup>10</sup> Main Bureau of Statistics, *Agriculture and Food Economy*, 1986-1990, p. 26.

<sup>11</sup> *Business Opportunities in Poland — A Guide to Agricultural Ventures*, Econolynx International Ltd., Ottawa, Canada, March 1992, p. 15.

the company is financially viable. To date, T.I.S.E. has made investments in only two projects. Although getting off to an initially slow beginning, it does expect to begin approving approximately two new projects each month. T.I.S.E. has signed an agreement of cooperation with CARESBAC to enable both organizations to expand their business opportunities.

The Bank for Socio-Economic Initiatives (Bank Inicjatyw Społeczno-Ekonomicznych [B.I.S.E.]) was established in 1990 to provide loan financing to small- and medium-sized enterprises. B.I.S.E. is the credit arm of T.I.S.E. Although it has only one location, B.I.S.E. identifies potential clients in areas outside of Warsaw through its affiliation with a technical assistance program called the Foundation for Socio-Economic Initiatives (Fundacja Inicjatyw Społeczno-Ekonomicznych [F.I.S.E.]), which has 14 regional offices throughout Poland. B.I.S.E. has a portfolio of approximately 600 loans (see Annex F).

The Agricultural Debt Restructuring Fund was established by the GOP in July 1992, to:

- Modernize farms;
- Develop the technical and productive infrastructure of the countryside;
- Develop, restructure, and modernize the food service sector for agriculture;
- Assist in debt repayment for farmers; and
- Carry out other activities related to the restructuring of agriculture as deemed important by the GOP.

This policy is based on the GOP's policy paper "Chances For The Countryside and Agriculture" (see Annex F).

The Director of the Fund reports to the Minister of Agriculture and Food Economy. The Fund issues credit through 17 participating banks. It refinances existing debt and provides loan financing for new projects for the private sector. So far, approximately 150 loans have been made under the line of credit, and 450 billion zlotys have been dispersed.

The GOP plans to establish an Agricultural Credit Agency to replace the Fund, so that the Agency can establish a loan guarantee facility (the Fund cannot do this due to its legal status). The Agency would restructure debt of private farmers and private enterprises on more stringent terms than the Fund. Money would be used primarily to provide credit for debt restructuring and new business development. The GOP is considering an auction system to auction off available credit to intermediate banks for onlending to the private borrower. The present thinking is that the banks that could offer the lowest rates of interest to borrowers would receive funds, and the Agency would finance the difference between the rate that the bank is charging the private borrower and the market rate of interest. The participating banks would take the credit risk on the loan funds, but the Agency would take the risk on the guarantee funds.

The Bank for Food Economy (Bank Gospodarki Żywnościowej [BGZ]) is a network of state-owned banks located throughout the country. The BGZ is financed through deposits and the State Treasury. Some of the cooperative banks also place deposits with BGZ. The Bank's traditional portfolio had been financing of PGRs and SOEs, the latter primarily in the area of agroindustry. BGZ has begun to finance some private businesses. Under present statutes, BGZ can only provide debt financing. It is

expected that new banking regulations that are being developed would enable BGZ to provide equity financing. Privatization of BGZ is scheduled to begin in January 1993.

The Agency for Agricultural Markets (ARR) provides loan guarantees to SOEs and private companies through participating banks. Until now, ARR has taken all of the risk on the guarantees provided. The Agency is in the process of revising its guarantee program, whereby the banks through which it works will contribute funds to the guarantee program, thereby assuming some of the risk. ARR is in the process of establishing this type of loan guarantee program with a bank in Poznan.

There are 1,670 cooperative banks located throughout Poland.<sup>12</sup> On average, their capital base is relatively low.<sup>13</sup> They have traditionally served the needs of the local communities in which they are located. They have and do provide financing to the agroindustrial sector, both to SOEs and to private farmers and businesses. The cooperative banks keep deposits with branches of BGZ, and seek guidance from BGZ regarding changes in relevant banking regulations. Possible changes in the banking law could force some of the smaller cooperative banks to merge with other branches in their region.

The World Bank and the European Community (EC) currently have lines of credit available for private businesses through the cooperative banking system. The program provides funds through a regional wholesaler (one currently operates in Poznan (Gospodarczy Bank Wielkopolski [GBW]), which provides funds to borrowers proposed by the cooperative banks in the region. As of October 1992, only 10 loans had been made, most of these in the agroindustrial sector.

The National Bank of Poland had a network of banks throughout Poland. Nine of these have been converted to one-person companies of the State Treasury in anticipation of privatization in early 1993. Plans are under way to identify foreign banks as investors and match these with the local banks. The foreign bank would purchase 20 percent of the local bank, the State Treasury would maintain 50 percent of the shares, and the remaining 30 percent would be given to employees and sold in the marketplace.

These banks traditionally lent to PGRs and SOEs. Because of the changes in the economy, the banks are being forced to consider financing private businesses. The biggest problem, however, is the poor financial condition of the banks due to the significant losses and outstanding debt owed to the banks by the state sector (SOEs, PGRs, and cooperatives).

Some wholly private banks do exist. Some of these were established by foreign capital, and are either branches of foreign banks or are joint ventures between foreign banks and local capital. The range of services provided by these institutions is relatively narrow. This is because of the current banking laws affecting them, and the fact that their standards for providing credit to borrowers and the information used to make financing decisions is based on western standards. As a result, many potential clients will be turned down for financing until they improve the financial recordkeeping and profitability of their business to match acceptable western standards.

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<sup>12</sup> Remarks made by Mr. Kostro, attorney and advisor to the Polish Parliament on the Amendment to the Banking Law, at a conference sponsored by the National Bank of Poland, November 17, 1992.

<sup>13</sup> Ibid.

## **Private Sector Linkages with the Government of Poland and State-Owned Enterprises**

Private sector linkages with the GOP are extremely weak. The few private sector business organizations that exist are not experienced in lobbying the government to win allies within the policy arena who will champion their cause. The GOP is also unaccustomed to being in a position where it receives input from outside of government circles and incorporating this into its policy agenda. There is little formal interaction between the GOP and those whom they govern.

Private sector linkages with the SOE sector continue to grow. There are still a large number of SOEs in the agribusiness sector. As more private companies enter the sector, they are forced to do business with the already existing SOEs. As privatization and bankruptcy of the SOE sector continues, the number of SOEs should decline, with the private sector filling these voids.

## **Strengths and Limitations of Government of Poland and Private Sector Agribusiness Structure**

Although there is an established GOP structure that addresses the agroindustrial environment, most of the structure does not address SME development or expansion, nor has it effectively transformed the state-dominated agroindustrial environment into a private one. A review of the aforementioned policy and regulatory and financing entities indicates that the activities are either competing with the private sector, not moving quickly enough to transform or remove SOEs and PGRs from the environment, or that financing concerns are primarily focused on the state sector.

The ARR is competing directly with the private sector in the procurement, exportation, importation, and storage of agricultural commodities. It is competing with financial institutions by providing loan guarantees. It is interfering with market decisions concerning pricing by establishing minimum and maximum prices for commodities in the marketplace, rather than establishing floor and ceiling prices against which it would intervene.

The Council of Ministers has presented its "Chances for the Countryside and Agriculture" as the basis for which the Ministry of Agriculture and Food Economy is to develop the strategy for development of Polish agriculture. This policy paper focuses heavily on protection for domestic farmers against imports, subsidies for agricultural inputs, and guaranteed minimum prices and encouraging farmers to participate in the privatization of the PGRs on favorable terms and preferential credits. The policy paper even talks about the health care and education system in the rural areas. Members of the lower House of Parliament and members of the Senate Committee of Agriculture commented that the policy was too general and that it was a collection of wishful thinking.<sup>14</sup>

The regional offices of the AWR are severely overburdened in the privatization process. By the end of August 1992, the AWR had taken over the assets of only 306 PGRs. Fortunately, much of the decision making has been delegated to the field. Most offices unfortunately have only between three to five employees to undertake all of the activities. One regional office had six people to oversee the privatization of 71 PGRs in six voivodships. Most of the PGRs have anywhere from 3 to 10 different enterprises on them.

Very specific procedures are to be undertaken in the PGR privatization process. These include advertising the properties and having interested parties submit sealed bids. Companies formed by former

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<sup>14</sup> *BOSS-Rolnictwo 145*, October 16, 1992, p. 3.

employees automatically get preference in the privatization process. Although an employee company may submit a proposal to lease or purchase assets, the AWR must still undertake the advertising and bidding process. This does not make sense.

What is also unreasonable is that although the land may have to be leased rather than purchased because of reprivatization problems, all fixed and rolling assets must be purchased. Banks will not consider the lease of the privatized PGR as collateral when a potential investor is seeking financing for these assets. It is also possible that the assets may be totally useless, but they have to be purchased in order to access the land. It is feasible, therefore, that one could only obtain a short-term lease on land, yet be the owner of totally useless fixed and rolling assets.

The Ministry of Privatization also finds itself in a burdened position. In three years it has privatized approximately 2,500 SOEs. If the present pace continues, it will fall far short of its original goal of privatizing 8,000 SOEs in three years. Regional offices are significantly understaffed, and employees sometimes oversee activities in several voivodships. One regional office was responsible for the privatization of 360 SOEs in three voivodships, with a staff of three professionals to undertake all of the activities. Decisions are made primarily in Warsaw (except in some cases of liquidation), and so all paperwork must be forwarded to the central office. There are still more than 6,000 SOEs to be privatized. Most workers in the SOEs still do not understand the implications of privatization, or how to go about preparing the SOE for it. A significant amount of time is spent by regional Ministry of Privatization (MOP) staff simply explaining the privatization options.

The GOP has taken a different approach with the SOEs than it has with the PGRs. Instead of creating an agency that will direct the mandated privatization of the PGRs, the GOP has left privatization in the SOE sector up to the SOEs. Based on the uncertainty that workers will face, there is little incentive for them to accelerate the privatization of their SOE. Under the present system workers must approve the privatization of their SOE. The GOP has also made privatization of the SOEs more difficult by forcing an investor to assume all of the debt of the SOE, whereas the AWR assumes the outstanding debt of a PGR.

Cooperatives are simply not being addressed. Policy makers continue to make reference to a Sejm Commission which is developing a revised Cooperative Law. This has been under development for almost two years. In the meantime, cooperatives are sinking. They cannot borrow financial resources, as banks do not know how the proposed law will affect their interests in the cooperatives. Some cooperatives are anxious to dissolve, and either begin anew as private companies or as western-style cooperatives. They do not want to do this under the present law, as they might be forced to turn over too many of their assets to the State Treasury (see Annex F). These cooperatives have plans for future development, but they are waiting for the new law.

SOE trading companies are still in a monopolistic position. They have used this position to expand into a variety of activities far beyond their original purpose. The SOE trading companies are preventing fair access into the marketplace by new private companies because of their protected position.

SOE processing companies will operate as long as they can without privatizing, as there is no incentive for them to become private. As a result of the economy not yet close to being a full market economy, these inefficient and protected enterprises will be tolerated, unless there is a change in policy.

PGRs are being taken over by the AWR. But it is up to the temporary management of the PGR to develop a restructuring plan. Those responsible for developing a restructuring plan are often inexperienced in any of the skills necessary to prepare a financially viable project. One manager had

received no training in financial restructuring, and was trying to develop a business plan for the restructured PGR by using some textbooks he had located.

The GOP has also decided to adopt a policy of subdividing the PGRs into as many small private plots as possible to correct the prior policies that are now considered politically incorrect. This will cause the agricultural production sector to be so fragmented that it will offer no hope of producing anything on a commercially viable basis.

In the area of finance, many of the state-owned financial institutions expressed similar concerns regarding financing of SMEs in agribusiness. Those institutions that had a history of lending to SOEs, PGRs, and cooperatives are still more concerned about recouping any outstanding loans to those enterprises than they are about lending to the private sector, particularly if the private businesses are new ones. Because private businesses are newer, they have less of a track record; thus, there is greater hesitancy on the part of the lender.

To compensate for this risk when the lender will consider a loan, collateral requirements of 150-200 percent generally mean that the potential borrower does not have adequate collateral coverage. Even when a potential borrower does have collateral, the present execution of collateral rights and arbitration are such that the banks are still hesitant to accept it. The lack of a central registry for pledged collateral also contributes to the problem.

Many of the financial institutions do not know how to package viable bankable projects, which consist of debt and equity. In the past, the range of financial instruments used was limited. There was no need for anything other than debt, because almost everything, including the banks, was owned by the state. Financing is often still done on a piecemeal basis. A borrower will finance one portion of a project, and when this is completed seek financing for the next segment. This often results in a project that was able to obtain sufficient financing to build all of the pieces, but it will never generate enough revenue to repay all of the creditors. Banks and businesses still do not understand the need for the commercial viability of a business.

## **Conclusions and Recommendations**

Some systems are in place, but they could be far more effective if the GOP made some relatively minor changes. The ARR was intended to serve as a market intervention and forecasting agency. Its role should be limited to these activities. The ARR should remove itself from economic trading and procurement activities, and allow the market to indicate prices for commodities. It should establish policy intervention mechanisms for cases when prices fall above or below levels it establishes through its forecasting models. The ARR should enable the private sector to engage in the trading, procurement, importation and exportation of commodities, and allow financial institutions to provide financing mechanisms to business. The Agency does not have the capacity to be a bank, and it is not an appropriate role for a policy-making entity.

The Ministry of Agriculture has a tremendous number of agricultural development activities that it oversees. These services need to be rationalized in conjunction with other ministries and agencies that provide services to the agroindustry sector to avoid duplication of effort, and to determine whether the level and types of services are still relevant based on the changing needs of the emerging private sector.

The GOP's policy as stated in "Chances for the Countryside and Agriculture" will rely heavily on subsidized inputs and protection for domestic agriculture. Instead, the GOP should encourage the

agricultural sector to become competitive in the international marketplace. The GOP can encourage this through a supportive policy and regulatory environment that continues to remove the GOP from economic activities, and allows the market to provide information to private agribusiness people to enable them to make rational business decisions.

It is also essential for the GOP to determine if it wants to pursue a policy of food self-sufficiency or economic development. There is a significant difference in the policies it will pursue depending on the choice made. The key issues in the case of agriculture is the GOP's attitude toward protection of an inefficient system and the privatization of the PGRs, and its current view that the creation of large private farms should be prevented, and that land should be directed toward increasing and creating small family farms.<sup>15</sup>

If the GOP chooses to pursue a policy of economic development, then Poland will need an economically competitive agricultural sector, with production at sufficient volume and economies of scale so that its products can be competitive in the international market. Having a large number of very small farms that receive subsidized inputs prolongs inefficiency, and it does not permit economies of scale in production. Unit costs of production will make Poland uncompetitive internationally. The country may be able to feed itself, but it will not be able to use these products to earn the foreign exchange it will require to purchase necessary imports.

The AWR must privatize the PGRs, many of which can have a number of unrelated enterprises operating on them. Because it is the policy to give preference to companies formed by employees interested in leasing the PGRs, the AWR should amend its advertising and bidding policy when an acceptable plan is put forward by an employee company. This would increase the number of privatizations occurring within a shorter time period.

Changes should also be made in the requirements to purchase the fixed and rolling assets of the PGRs. These may or may not be necessary for the new company, and it should be up to the new company to make this determination. This change could also enhance the rate at which privatizations are completed, as companies will require smaller amounts of capital. It would also be useful to provide more staff to the regional AWR offices, particularly people who have been trained in financial restructuring.

Managers on the PGRs need assistance in developing restructuring plans. Either training should be provided to them, or this responsibility should be given to someone who has the training. The privatization process would be enhanced if viable restructuring plans were developed quickly. Employees need more information about what their options may be regarding leasing of the assets. Many of these people would be interested in forming a company to lease assets, but they feel helpless and uninformed. The AWR needs more staff in place to deal directly with the employees.

The Ministry of Privatization has a much larger mandate than the AWR, given the sheer number of SOEs still to be privatized. The regional offices have highly qualified people, but the offices are severely understaffed. The MOP provides very good training for its regional staff, as well as for people in the *voivod* offices who are responsible for the voivodship privatization activities. If the MOP is undertaking this training for its staff, it should have confidence in its employees to successfully undertake and implement the GOP's privatization policies. The MOP should delegate far more of the decision making and implementation process to the field, as has been done by the AWR. More staff should be

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<sup>15</sup> Government Policy Paper, "Chances for the Countryside and Agriculture," The Council of Ministers, September 1992, p. 9.

placed in the regional offices, and the regional offices should always be encouraged and reminded that the MOP in Warsaw is available for assistance with difficult issues.

The GOP should also review its less directive policy regarding the privatization of the SOEs, versus the PGRs. The privatization policy of the PGRs has provided the GOP with the opportunity to forcefully move the PGRs out of the state sector. It has done this by mandating that the AWR will take control of all of the PGRs within a given timeframe. Under the statutes that established the AWR, the GOP has enabled the AWR to control the "ownership" of the PGRs, and to eliminate the control of the workers' councils, which are generally the primary obstacle in the privatization process.

The GOP has not done this with the SOEs. Unless forced to privatize by the founding body, it is still up to the SOE to initiate the privatization process. To do this, approval must be received from the workers' councils, which, understandably, generally impede the process. If the GOP wants to remove these enterprises from the state sector in a reasonable time frame, it should force SOEs to adopt a privatization plan within a specified time frame. Adopting a more aggressive strategy toward the SOEs will assist the SME sector. This will occur as the privatized SOEs are forced to compete on the same basis as private businesses. Private businesses will emerge as they begin to understand that they can operate at least as efficiently as companies that were once protected by the state.

The GOP should also address its inconsistent policy regarding the outstanding debt of the SOEs versus the PGRs. When the AWR assumes control of a PGR, the AWR also assumes responsibility for the debt of the farm. A potential lessor or owner is not responsible for paying this off. However, an owner of an SOE must assume all of the outstanding debt of the enterprise. This causes unrealistic expenses, and often outweighs the value of the assets being purchased. It is a significant deterrent in the privatization process. If there is a choice between forgiving some or all of the debt to enable the SOE to be privatized, and the SOE becoming so unprofitable that it will be liquidated through the bankruptcy process so that a bank will not recover its money anyway, then the logical choice is either to reschedule the debt or write it off completely.

SOE marketing and processing companies should be forced to privatize as quickly as possible. They are still benefiting from protection and oligopolistic practices. They should be forced to compete on an equal basis with emerging private sector companies. In fact, these SOEs are inhibiting the entry of SMEs into the marketplace, as the state companies are still operating within a protected environment not available to the private sector. Valuations of the SOEs should be market based — what the market is willing to pay to purchase them.

The cooperative sector has been waiting almost two years for the GOP to make decisions. The GOP should revise the cooperative law and simply provide a legal structure within which cooperatives will function and operate. The structure and activities of the cooperative should be determined by the members. The GOP should enable the cooperatives to dissolve and reorganize without sacrificing their assets. If a cooperative reorganizes, the GOP will benefit by the tax revenues generated. If the cooperative dissolves and does not reorganize, members would receive their initial contributions, and other assets would be sold. The State Treasury would see its share of the revenues through taxes on this sale.

The area of finance is a more complex one. (A Loan Guarantee Study currently being undertaken by the GEMINI Project will provide a more in-depth discussion of these issues.) Financial institutions' primary concern is recovery of outstanding debt from the state sector. SMEs are suffering because banks have not yet refocused their thinking on financing for the private sector. Bankers desperately require training in project analysis, review, and packaging. Business people and financiers must learn the concept

of financial viability of an overall project, in contrast with how much money one can borrow to finance individual pieces of a project. Local institutions could learn from organizations such as CARESBAC.

The GOP can assist by developing a more aggressive policy in debt restructuring and forgiveness in the state sector. This will free financial resources to be redirected to the private sector. The GOP should also revise some of its bank liquidity requirements, which contribute to already high interest rates. The GOP should revise the debt recovery process through collateral laws and arbitration procedures to provide more confidence to lenders that their claims will be satisfied. A central registry for pledged assets should be developed to assist in this process.

## **AGROINDUSTRY DEVELOPMENT POLICIES OF THE GOVERNMENT OF POLAND**

The key issues to be addressed by the GOP in an agroindustrial policy include:

### **Privatization**

1. Provide more staff resources in the privatization of the PGRs, and enable the process to operate more efficiently by developing a fast track approach for worker-owned companies that want to lease the farms. Develop a policy to address reprivatization so that the privatization of the PGRs can proceed more rapidly.
2. Rationalize the approach toward the privatization of the SOEs through a directive policy similar to the PGRs. More of the decision making must be delegated to the field, and additional staff are needed in the regional MOP offices to implement this.
3. Debt restructuring and forgiveness toward the SOEs and the PGRs must be addressed more aggressively by the GOP, not only to accelerate the privatization process, but to rechannel financial resources to the SME sector.
4. Legislate changes now for the cooperative sector that will provide a legal structure within which cooperatives must operate. Enable the sector to retain its assets, either for use within the new structure or for liquidation. In either case, the GOP will benefit.

### **Private Sector Agribusiness Development**

1. Develop a policy that addresses the role and the needs of the private sector in agribusiness development. Neither the Ministry of Agriculture nor the Ministry of Industry and Trade has developed such a policy.

### **Economic and Market Intervention Policies and Practices**

1. The GOP must create a stable policy and regulatory environment to encourage private sector investment. Reasonable income tax levels and tax incentives, a reasonable and rational structure of duties, rationalization of the government approval process, monetary policy that channels resources to the private sector, and the role of government as an advocate for the private sector must be addressed.

2. Recognize the role of the informal sector in agroindustry, particularly in the areas of cross-border and domestic trade. Identify how its role can be expanded to assist in the growth of the SME sector in agribusiness.
3. Develop a policy that encourages domestic private agriculture to be competitive with the international market by removing subsidies and forcing the sector to operate more efficiently. Remove import and export controls, and permit necessary inputs to be imported within a duty structure that recognizes the need for modernization and efficiency. At the same time, create a policy that does not limit the potential for economically viable farm enterprises.
4. Develop a price stabilization and control policy that does not limit the potential of domestic private agriculture, but rather encourages it by relying on market prices rather than government subsidies for its survival and expansion.

### **Strengths and Limitations of Government of Poland Agroindustry Development Policies**

The GOP does not have policies that address the agroindustrial sector. The primary policy focus remains privatization. What limited policy does exist in agriculture addresses primarily the privatization of state farms, and the need for subsidies and protection of domestic agriculture. Given the fact that the agroindustrial sector contributes significantly to the economy, the GOP must focus on it in order to encourage private sector investment in it. The key issues discussed above provide a framework within which the sector can develop.

If the GOP does not develop a policy to address the outstanding issues concerning privatization of the PGRs, SOEs, and cooperatives, if it does not identify and address the role that the private sector should serve in agroindustry, if it does not create a stable regulatory and policy environment, if it does not channel investment resources to the sector, and if it continues to protect the participants through government subsidies and price mechanisms, then Poland will lose in the arena of foreign investment, domestic investment, food self-sufficiency, and economic development.

### **Conclusions and Recommendations**

The GOP must develop a comprehensive legislative act that advocates and supports SME development, particularly in regard to the agroindustrial sector. The act must address the need for private sector agribusinesses to operate within a free market system — open and competitive market conditions. The act must address the legislative, regulatory, and administrative practices that should be in place to enable this.

The GOP, as part of its program, must recognize the need for policy and investment incentives to stimulate the creation and expansion of SME agribusiness. It must advocate the need for this development. Implementation of policy must be decentralized. Privatization activities must be targeted toward linking these efforts with SME and private sector takeovers of the SOEs.

The need for the GOP to create a policy that addresses the role of the SME sector within agroindustry has been established. The balance of this assessment will address how the GOP can create an enabling policy and action environment.

## **CHAPTER THREE**

### **GOVERNMENT OF POLAND POLICY REQUIREMENTS AND OPPORTUNITIES**

#### **SUPPORT FOR LOCAL INITIATIVES**

The GOP has an opportunity to address the needs of the SME agroindustrial sector through enabling policy initiatives. Policy should focus on establishing an advocacy role for the private sector within the government, and accelerating the process by which the assets of the state sector are transferred to private ownership. The focus should be to decentralize the implementation of government policy to the local level, and to enable the private sector to undertake activities once performed by the state.

#### **Private Sector Agribusiness Organizations**

The GOP should encourage the development of private sector agribusiness associations that will provide input to the GOP concerning policy that the government should implement to strengthen the private sector. The private sector knows better than the GOP its needs and the problems it encounters within the regulatory and administrative bureaucracy. The GOP must hear from representatives of the private sector in order to provide an appropriate policy response.

#### **Small and Medium Enterprise Advisory Centers**

The majority of business advisory services have been financed in whole or in part by the GOP. Some of these are provided by Regional Extension Service offices (Ośrodek Doradztwa Rolniczego [ODR]). The range of services provided varies depending upon who has funded the center and the particular skills of the staff. There are often duplicative efforts within relatively small geographic areas, with centers totally unaware of the existence of another entity providing similar services nearby.

The GOP should remove itself from these activities, and enable private voluntary and nongovernmental organizations and educational institutions to undertake these activities. Services provided should be based solely on the needs of the SME community being served.

Activities should not be directed by government, except to ensure that an organization is operating within the framework of the law. Politicians should have no control in determining how the center is structured and who receives assistance.

#### **Agricultural Property Agency**

Regional offices of the AWR desperately require more staff and training. Personnel are quite skilled in the privatization process. More training is needed in the area of financial analysis and business restructuring in order to work with the management of the PGRs to design sensible restructuring

programs. This is essential, given the fact that many PGRs have several businesses operating within their structure, some of which have nothing to do with agriculture.

When worker companies have submitted proposals to take over PGR assets, AWR should eliminate the advertising and bidding process, as current policy already gives preference to worker-owned companies to obtain the assets.

The AWR is in an awkward position because it must generate revenue to finance its activities, at the same time that it must privatize the PGRs. These objectives can be self-defeating and create serious problems. In its effort to generate sufficient revenue to finance its activities, the AWR may unintentionally hamper the GOP's privatization goals to satisfy its own budgetary requirements. AWR may insist on terms for the lease or sale of PGR assets that are unacceptable to a potential investor. The privatization will fail and the AWR will lose revenue that it could have generated for itself if it had not applied such stringent terms. The GOP should reconsider its strategy of having the AWR finance its operations through privatization activities.

### **Ministry of Privatization**

The Regional Ministry of Privatization offices require an even larger increase of trained staff as a result of the large number of SOEs still to be privatized. Far more authority should be delegated to the regional offices. The GOP should develop a more directive policy concerning privatization of the SOEs, similar to the one in place for the PGRs. Eliminating the control of the workers' councils would accelerate the process significantly.

The GOP should adopt a more realistic attitude toward the value of the SOE assets. This, in conjunction with debt rescheduling and forgiveness, would also enhance the rate at which the SOEs are privatized.

### **Agricultural Marketing Agency**

The GOP should revise the role of the ARR. ARR should be financed solely through the state budget, and it should not engage in any commercial activities. Commercial activities should be undertaken by the private sector. The ARR should not control the prices of agricultural commodities. Rather, it should track domestic and international commodity price information to be used by the private sector to make commercial investment decisions, and by the government to develop appropriate intervention strategies when necessary. ARR is not a bank, and, as with other commercial activities, it should remove itself from the financing arena, and leave this activity to the private sector.

### **Regional Development Authorities**

Development authorities in *voivod* offices are strategically located to serve as effective intermediaries between private sector groups in the *voivod* and the central government. The development authorities should foster interaction between private sector associations and the *voivod* office to ensure an ongoing dialogue between the private sector and the government, with the *voivod* serving as the information link to the center. The GOP will have to foment a significant change in the attitude of staff serving in these offices to ensure that government employees fully understand that their purpose is to

serve the public. Given past practices and policies, it may be necessary to restructure these offices to accommodate this change in outlook.

### ***Voivod Offices***

Voivodship offices also have staff that implement privatization activities for SOEs in which the *voivod* is the founding body, or for which it has been appointed to act on behalf of the founding body. These offices find themselves in positions similar to the regional MOP offices. More staff is needed to undertake the significant number of privatizations, particularly because so much effort is spent dealing with the workers' council and management explaining procedures, allaying concerns, and trying to accelerate the process. Efforts should concentrate on identifying investors who wish to purchase the assets, and develop financially sensible restructuring plans. More training in financial analysis and restructuring is required for the voivodship staff.

### ***Gmina Offices***

*Gmina* offices have an advantage in privatization, because they do not have to seek approval from the *voivod* or the MOP to privatize an SOE for which it is the founding body. The *gmina* office should concentrate its activities on accelerating the pace of privatization, removing itself from commercial activities that should be provided by the private sector, and ensuring that local bureaucratic constraints in the private investment process are eliminated.

### **Cooperatives**

Local and regional cooperative banks should be linked with private sector agribusiness organizations and the SME advisory centers to provide financing for activities that the latter two groups will generate. At present, the local cooperative banks generally wait for clients to appear, rather than to solicit business. Although few private sector associations exist present, there are no effective linkages between those that exist and the network of cooperative banks. The regional cooperative banks would also benefit from this, as the regional banks depend on the local cooperative banks to generate business for them. Financing may be available, but local cooperative banks have no effective way of communicating this to a dispersed and unorganized client base. Training must be provided to upgrade the financial analysis and packaging skills of staff in the local cooperative banks if they are to have a significant impact on increased investment in agribusiness.

Production and marketing cooperatives should also participate in the process of interaction with *voivod* development authorities. They can provide valuable information through the *voivod* to the center concerning agricultural and production issues affecting the agroindustrial sector.

## **NATIONAL AGROINDUSTRY ADVOCACY PROGRAM**

### **Collaboration with Private Sector Organizations**

To ensure that the GOP undertakes the necessary changes to encourage and support private sector investment in the agroindustrial sector, the GOP will have to develop and initiate a National Agroindustry

**Advocacy Program.** The program must rely heavily on decentralizing government decision making and implementation of policy, and on integrating private sector concerns into policy and legislative reform. To accomplish this, the GOP will use local initiatives developed by local and regional private sector associations and foundations, in cooperation with regional government offices.

The role of the private sector will be to effectively communicate to the GOP the policy, legislative, and administrative support it requires to take advantage of market opportunities that arise. The role, in this case, of the regional government offices is not to undertake the activities proposed by the private sector, but to serve as the private sector's advocate with the central government in Warsaw.

### **Market Analysis and Development**

The role of the GOP, on a national and regional level, should be to undertake and assist in market analyses and development, both domestic and international, on behalf of the private sector. It must identify and target market opportunities for the private sector, and then develop effective mechanisms to disseminate this information to the private sector for investment. It must be strongly emphasized that market opportunities are not to be acted upon by the GOP, or its regional authorities, but by the private sector. The GOP has a habit, due to its historical role, of undertaking initiatives when it identifies an opportunity. The action that the GOP should undertake is to ensure that obstacles to private sector activity and investment are removed. The GOP must remove itself from the implementation process, and serve as a promoter for the private sector.

### **Fast Track Privatization**

Privatization policy must be revised to further decentralize decision making and authority to the regional offices, and supplement regional offices with additional staff. Assistance must be provided to SOEs and PGRs to develop restructuring plans, if a viable one can be developed, as management in neither the SOEs nor the PGRs has the skills to do this. The GOP should establish clear time frames and a stronger mandate for the privatization of the SOEs, as it has done with the PGRs. SOE debt should be rescheduled or forgiven to accommodate the financial realities of the enterprises. Policy for the privatization of the PGRs should be directed toward accelerating the process if worker companies submit plans for leasing or purchasing the assets, and should also remove the requirement of purchasing fixed and rolling assets that may be useless and outdated.

### **Enabling Public and Private Sector Local Initiatives**

The GOP and the private sector cannot operate independently of each other within a market economy. The former economic and political structure encouraged the few private businesses that existed to operate beyond the scope of the government. The GOP owned and operated almost everything.

The transition to a market economy dictates that these activities and attitudes change drastically. The GOP must continue to remove itself from economic activities, and these will be undertaken increasingly by the private sector. The private sector will be forced to operate within the legal and administrative framework. To ensure that this framework is organized to function in a manner that enables the private sector to carry out its activities, the private sector will have to make representations to government. The GOP will have to respond in a manner that incorporates the private sector's concerns and supports the process, or the economy will continue to deteriorate. It is through the interaction of the

private sector with the GOP, on a national and regional level, and the advocacy role of the GOP on behalf of the private sector, on a national and regional level, that will enable this process.

### **Promoting Agribusiness Formation and Investment**

The private sector must be encouraged to direct more investment to agribusiness formation. The financial system must accommodate a shift away from debt financing to equity financing. This initiative will most likely come from foreign capital and foreign financial institutions, as the domestic financial structure is ill-equipped to undertake this transition.

Joint ventures between members of the Polish private sector should be encouraged as part of new capital formation in the sector. Tax incentives, reasonable tax and duty rates, a stable policy environment, and a broad range of financial services are necessary for this to occur. An overall agribusiness policy will assist in the process.

One method of addressing the credit issue is through the supply of in-kind credit for input supplies from large agribusinesses to SME agribusiness suppliers, processors, marketers, and growers. The successful business system is an integrated one. The business linkages between and among the participants are such that a disruption in service in one of the linkages results in disruption for all. Providing an effective network of credit and support services through the chain will assist in limiting disruption.

Businesses must be able to undertake long-term investment activities with reasonable certainty that their plans will not be rendered economically unviable because of a drastic change in the regulatory environment. The GOP introduced a new system of taxation in January 1992. The system mandates high levels of employer contributions for employee benefits (47 percent of gross salary), and two types of corporate tax. The first is income tax, which for legal entities is approximately 40 percent.

The second is a turnover tax, which is a tax strictly on sales, and differs depending upon the type of activity in which one is engaged. The turnover tax penalizes businesses in two important ways. The tax is to be paid monthly and is based on the value of invoices, regardless of whether the invoice was paid during the period. The second issue is that the value of the invoice also includes any duty that the customer will pay, and which the business will remit to government. The seller must pay turnover tax on the duty portion of the invoice, even though the business remits the duty to government and keeps none of the duty revenue as income.

Businesses are caught in a cash flow squeeze when having to provide outlays for turnover taxes on monies not yet received. The GOP should revise this policy so that businesses do not have to pay tax until the invoice has been paid. The GOP should also revise its policy of requiring businesses to pay turnover tax on the duty portion of an invoice.

By November 1992, the GOP had considered further increases in employer contributions on employee salaries (up to 75 percent of gross salary). The GOP also has plans to revise certain taxes and institute a VAT tax system. The issue of duty structure has not been addressed. These proposed changes will have a significant impact on the financial viability of businesses, and do not encourage long-term investment.

The GOP must understand that to promote investment in agroindustry, duties must be removed or substantially lowered on all items required by the sector. This includes items that are part of the

infrastructural support needed to run a business, such as computers and telecommunications equipment. Standardized tax investment credits and tax holidays should be introduced and applied equally to anyone who meets the specifications.

### **Targeting the Promotion of Agribusiness Intervention**

Sectors within the agroindustrial sector offer opportunities for specific intervention, particularly for development within the export market. The oilseed industry is one that provides opportunities to develop effective linkages between growers, processors, and input supply, marketing, and trading companies to effect this.

The geographic focus of the intervention should logically take place in the northwestern part of Poland, because the large PGRs in that area are the traditional growers of oilseed, there are several SOE extraction and processing plants in that area, and there are several ports that can service the export market.

The traditional linkages within the oilseed industry have included a few small private farmers contributing product to the output of the PGRs. This output has been provided to the SOE extraction and processing plants for the production of oil, margarine, and some amount of feedmeal, primarily for the domestic market. SOE trading and distribution companies supplied the domestic market with the finished products. Changes in the industry within the last two years have resulted in some of the raw seed being exported for processing and use elsewhere. This has hastened the pace at which the industry's state sector has encountered problems of financial viability.

These linkages can be strengthened, however, through the intervention of a procurement and marketing company that would provide the necessary inputs, credit, technical assistance, and marketing linkages to the export market. The company will ensure that processors have sufficient raw material by forward contracting with private farmers and PGRs. Growers will be able to satisfy their contracts because the company will provide them with the necessary farm inputs and technical assistance. The processors will be able to sell their product to the company under contract. The company will have already developed linkages with the export market in oilseed and its refined products.

Assistance from certain institutions will be necessary to enable this process. The procurement and marketing company may deem it necessary and advantageous to purchase some of the assets of the SOE extraction plant. In this case, the regional offices of the MOP will be called upon to expedite this process.

The financial position of the PGRs should improve. An integrated system would offer a rational approach to privatization, and provide an investor (worker-owned company) with an opportunity for leasing or purchasing the assets of a financially viable PGR. In this case, the regional offices of the AWR will be called upon to expedite the process.

A strong advocate in the GOP will be called upon to eliminate the institutional barriers to this type of investment. These may include remission of duties on equipment, tax incentives, revision of banking regulations to ease the movement of capital to purchase assets or land (particularly if there is foreign ownership), and timely movement of materials through customs. The GOP will also be required to begin work on infrastructure necessary for the industry to succeed. These include improvement of port and rail facilities and communications systems.

## **Public Education**

Any national program must include a strong element of public education. Attitudes among the general population, the private sector, and people within government must be attuned to the role that private sector agribusiness plays in the economy. Attitudes must also be changed regarding the responsibilities of the government and the private sector within the process.

The private sector has a major role to play in the education process. Private sector trade associations must be encouraged, not mandated, to develop training for students and teachers, government employees, and other members of the private sector. The training must address the role of private business within the economy as a whole, and within agroindustry, in particular.

People must be educated to understand the linkages between the grower, the processor, and the customer in a market economy, because these linkages operated differently in the past. Although the education process will be directed toward agribusiness, these linkages will be similar within other sectors.

The most significant change in attitudes must occur on the part of the public, and on the part of government employees. The public must begin to expect that government is in place to serve the public. This was not the traditional role of government within the command economy.

People in government must understand that their purpose is to ensure that the public is able to operate within a well-defined administrative and regulatory framework, and that the rules are applied objectively. It is the role of government to guard against abuse of the rules, and to revise policy to keep pace with changes in the business environment. It is not the role of government to mandate that the private sector undertake specific types of economic activities, or to involve itself in activities that the private sector would undertake. The role of the government is to serve. It is up to the public to demand this change. Only then will the government respond. It will be up to the private sector to take the lead in this process.

## **CREATING A PRIVATE SECTOR AGROINDUSTRY DEVELOPMENT POLICY MANDATE**

### **Outline of Overall Policy**

The GOP must mandate a private sector agroindustrial development policy to highlight the importance of the sector to the economy, and to ensure its viability. It must address the need for domestic and international private sector investment. It must ensure that a cohesive strategy be developed that addresses the constraints that were identified so that the investment can occur. It will require coordination among many ministries, and it will require input from the private sector to determine the best ways to eliminate constraints.

The GOP must remove itself from economic activities that should be undertaken by the private sector. Financial resources in the form of equity and debt must be available to SMEs. Privatization must be viewed as one part of the strategy, and policy implementation must be brought to the local level as much as possible. It must be stressed that the role of government is to serve, and that it is the responsibility of the private sector to demand this.

### **Joint Public and Private Sector Forums**

The GOP, in collaboration with the private sector, should begin with the process of drafting this policy. To accomplish this, a series of forums should be held throughout Poland to seek local level input from the private sector, and regional and local government officials. The input from the public and the private sectors, those who implement the policy and those who are affected by it, will be used in drafting an umbrella agribusiness policy and a strategy and action plan to implement it.

### **Role of GEMINI with Council of Ministers**

Based on the significant level of field research carried out within this assessment, the GEMINI Project could be available to coordinate this process. Working with a Council of Ministers and Private Sector Agroindustry Development Task Force created by Minister Eysmont, GEMINI should undertake the process of establishing private and public sector task forces in several *voivods* to develop a consensus as to what the policy should address, and how it should be implemented.

## CHAPTER FOUR

### PROFILE OF THE EDIBLE OIL INDUSTRY IN POLAND

This chapter reviews the agroindustrial sector with a focus on oilseed. It goes into a detailed analysis of the industry and the difficulties the industry has had in operating successfully within a market-led economy. Chapter Seven suggests a conceptual model to be used as a method to transform the industry into one that is viable, instead of one that is in decline.

A secondary focus was the horticulture industry. The subsector analysis results are similar to the oilseed industry, the difference being the size of the individual farms. The problem of inputs and market linkages are the same. A similar model could be developed to transform this industry into one that is dynamic and viable.

The conceptual model used in this paper is not new. It has been used in many different parts of the world. Multinationals with knowledge of the market have developed their raw material base, added value to this base, and entered the market with a high quality product, competitively priced and profitable.

In 1986 the Polish oilseed industry produced 1.6 million tons of rapeseed. The production of rapeseed in 1992 was less than one-half of the 1986 production, partly because of the inefficiencies that surfaced during the change to a market-driven, profit-oriented economy. The agroindustry sector analysis demonstrates the need to secure markets at all levels (farmer to crushing plant), the need for high quality inputs (new hybrid varieties of high-yielding seed with a short growing season, fertilizers, and pesticides), and management assistance to understand and prepare business and marketing plans. The starting point is the Oilseed Production and Procurement Company, which will provide the inputs and raw material marketing outlet, and begin the process of market analysis for value-added products (bulk oil, compound feed, processed and packaged meats, and branded refined oil and margarine).

### DOMESTIC PRODUCTION AND DEMAND

World production of rapeseed is estimated at 26 million tons,<sup>16</sup> with Poland producing .7 million tons in 1992. The major rapeseed-producing areas are: China, 7 million tons; India, 5.6 million tons; European Community, 6.2 million tons; and Canada, 3.9 million tons.

In 1992, Poland is expected to export 200,000 tons of rapeseed,<sup>17</sup> primarily to the European Community and Mexico. This figure is down significantly from the 668,000 tons<sup>18</sup> exported in 1990.

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<sup>16</sup> *Oil World Statistics Update*, July 24, 1992 (6 Rape-13).

<sup>17</sup> Interview IBA Corporation (ConAgra), Mr. Robert M. Jarosinski, October 4, 1992

<sup>18</sup> *Oil World Annual 1992*, April 1992, (Europe: Poland-127).

This is because of a lack of working capital for state farms and SOE processors, rising cost of farm inputs, unsatisfactory prices received for the crop, lower domestic production caused by drought, and a breakdown in the traditional market linkages.

Present production capacity of the rapeseed oil extraction plants in Poland is .8 million tons.<sup>19</sup> An additional .1 million tons of production capacity is expected to become operational in 1993. The GOP has had to import refined oils and oilseeds for crushing (soybean) to supplement locally produced oil to satisfy the domestic market.

The majority of the Polish domestic rapeseed crush (after exports) is used to manufacture margarine. The margarine market in Poland is estimated to be 7 kilos per person, for a total national market of 268,000 tons per annum.<sup>20</sup> Given present domestic extraction and processing technology, rapeseed oil used in the manufacture of margarine in Poland offers processors the highest value-added potential if domestic rapeseed oil is used. The domestic market demand for margarine is supplemented by higher-cost imported margarine.<sup>21</sup>

Domestic demand for rapeseed meal has declined 21 percent in the last two years because of the preferences of feedmeal users for imported soybean meal.<sup>22</sup> Some of the change in preference toward the imported product is because of poor marketing and lack of effort of local producers to educate the consumer about the positive value of the local product. The total domestic market demand for oilseed is estimated to be 843,000 tons. Of this, 400,000 tons<sup>23</sup> are rapeseed meal and 443,000 tons<sup>24</sup> are soybean meal. Poland expects to export 30,000 tons of rapeseed meal in 1992.<sup>25</sup>

A potential exist for producing a mobile fuel out of rapeseed oil.<sup>26</sup> The research is not complete and a commercial chemical process has not been defined.

Rapeseed is grown throughout Poland, but production centers on areas with better soils and larger concentrations of state farms (southwestern and northwestern Poland). Of 49 provinces, 12 produce almost 70 percent of the crop.<sup>27</sup> SOFs produced 76 percent<sup>28</sup> of the rapeseed grown in Poland in 1991.

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<sup>19</sup> *Agro Serwis No. 11*, September 16-30, 1992, p. 1.

<sup>20</sup> Interview, Bielmar, Mr. Zdzislaw Then, September 14, 1992.

<sup>21</sup> Interview, Bielmar, Bielsko Biala, Mr. Zdzislaw Then, September 14, 1992.

<sup>22</sup> *Oilseeds and Products*, American Embassy, Warsaw, Poland, April 1, 1992, page 27.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Oil World Annual 1992*, April 1992 (Europe: Poland-125).

<sup>25</sup> Institute for Agriculture and Food Economics, Market Research Department, June 1992, p. 24 (rapeseed meal exports in 1989, 45,000 tons; 1990, 112,000 tons; 1991, 164,000 tons).

<sup>26</sup> Interview, Bispomas, Mr. Jerzy Butowski, October 13, 1992.

<sup>27</sup> *Oilseeds and Products*, American Embassy, Warsaw, Poland, April 1, 1992, p. 15.

<sup>28</sup> *Oilseed and Products*, American Embassy, Warsaw, Poland, April 1, 1992, p. 15.

Rapeseed production has decreased by 21 percent during the last year. SOFs suffered from a lack of management, capital, and a stable market during the transition to private ownership.

Based on present production, there is a deficit of 600,000 tons of rapeseed if Poland were to supply 100 percent of its domestic needs and satisfy all current export orders. The export market potential of rapeseed oil is far greater than Poland's present production capabilities. A primary limiting factor is the present status of the oil extraction processing plants. The extraction technology is outdated. The lack of capital, poor management, and insufficient export market linkages affect the industry's ability to effectively compete.

### **Production and Marketing Constraints**

Production constraints originate with the state-owned extraction plants (primary purchasers of rapeseed), which do not contract for product with the private farmer prior to the growing season. The mentality of management is that contracts benefit only the farmer.<sup>29</sup> Because of traditional marketing linkages, processing plants have developed a special relationship with the SOFs, relying on the farms to supply the processing plants' major raw material needs.

The breakdown of these traditional linkages as a result of privatization<sup>30</sup> and transition to a market economy finds the processing plants in a situation where the SOFs alone cannot provide sufficient raw material to the plants. The extraction plants then turn to private farmers. The farmers are increasingly unwilling to grow rapeseed because of insufficient returns as input costs have skyrocketed. Farmers presently grow rapeseed primarily as a rotation crop with wheat. This enables farmers to take advantage of the high fertilizer content remaining in the soil after a rapeseed crop is harvested. For growing rapeseed to be profitable, private farmers calculate that the rapeseed price should be 50 to 80 percent higher than current prices paid for wheat (this method of calculating rapeseed price is used throughout Poland). However, farmers do not apply proper cost accounting principles, and neglect to attribute some of the inputs applied to the rapeseed crop as part of the costs to grow wheat. Therefore, the targeted rapeseed prices farmers perceived are necessary to be profitable are not correct.

Because of a lack of working capital, low crop prices, and increased input costs, farmers have reduced their usage of inputs. In 1991 farmers decreased their use of fertilizer by 42 percent, to 95 kilograms per hectare.<sup>31</sup> In 1992 they continued to reduce the amount of inputs used on rapeseed, further reducing yields.

As mentioned earlier, ARR is a government agency with a mandate to stabilize economic conditions in commodity markets to protect farm incomes. ARR works with a basket of specific commodities. It will purchase surplus product in the domestic market (surplus as determined by its forecast), and identify export markets for the producers, or hold product in storage for future domestic use. ARR does not purchase commodities from individual producers; rather, it purchases bulk product from central processors.

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<sup>29</sup> Based on comments made at interviews with farmers and state-owned extraction plants.

<sup>30</sup> Some state-owned enterprises have been liquidated under the State Enterprise Law because of their financial standing. Voids have been created. In many instances, nothing has filled the void. Growers and processors do not know how to respond.

<sup>31</sup> *Oilseeds and Products*, American Embassy, Warsaw, Poland, April 1, 1992, p. 14.

ARR will also provide bank guaranties to selected enterprises. In the case of grains (wheat, rye, and barley), ARR gives some of the state-owned grain enterprises a 50 percent advance payment for crops at the start of the growing season. The money is forwarded to growers for inputs. The farms then sell their product to the state grain enterprises. If, based on the harvest, ARR forecasts a shortage, ARR will make arrangements to import commodity to forestall significant consumer price increases.

This is a case of a government agency intervening to "fix" a problem. The situation in Poland is such that there are too many components of the production system that require fixing, and the financial and marketing interventions of the GOP do not eliminate the constraints that disrupt the proper functioning of the integrated agribusiness activities. Instead of undertaking its traditional intervention activities, the GOP should formulate policy that will remove the need for them. The ARR currently serves as financier, trader, forecaster, and stabilization watchdog. Most of these functions should be undertaken by the private sector (banks, private trading companies, private commodity markets), and ARR should function only as a forecaster of prices for commodities and for agricultural inputs, and disseminate this information for use by the private sector. The forecasting role should include the range of commodities produced domestically that offer Poland a comparative advantage. The agency has been given a mandate to participate in income-generating activities because it only receives a portion of its funding from the state budget. The GOP should revise this policy and provide ARR with all of its funding from the state budget. ARR should extricate itself from the conduct of business activities that should be performed by the private sector.<sup>32</sup>

The cost of moving product domestically from the point of production to the market is costly. Rail transport, that is currently owned by state enterprises, can be as much as 40 percent more expensive than transport by truck, depending upon transport zones.<sup>33</sup> Several private trucking companies have emerged. Although rail transport can sometimes be expensive, transporting bulk commodities by truck in areas where no rail lines exist can be extremely inefficient and costly. An efficiently operated rail network could significantly reduce costs and make products more cost competitive internationally. The GOP must review the financial situation of the state railway system and identify whether the private sector can operate it more efficiently.

The state-owned rapeseed extraction and processing plants are not able to meet domestic market demand. The individual conditions vary, but a constant theme is ignorance of how to operate a commercially viable business in a market economy. Companies lack marketing plans. Due to the structure of the command economy, factories were not in a position to have to concern themselves with market share or consumer needs. Processors were given targets by central planners about what to process, and state farms were told what to grow based on what the processors would need. Private farmers provided product to cooperatives at prices established by the processor, and the cooperative fed these products into the state processing system. In some cases, farmers provided product to a state farm, or directly to a state-owned processor.

Since the move to a market economy, many state farms and state enterprises find themselves in financially difficult or insolvent positions. State farms are unable to supply all of the raw material needs to the extraction plants. The move to a market economy has also meant that traditional methods of determining production are changing. Enterprises must learn to identify who their market is. Production

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<sup>32</sup> Interview, Agencja Rynku Rolnego, Agriculture Market Agency (ARR), Katowice, Ms. Krystyna Krystian, September 18, 1992.

<sup>33</sup> Interview, Morski Port Handlowy Gdynice S.A., Mr. Mariusz Guminski, October 12, 1992.

should be determined to satisfy the demands of the market. Many enterprises do not understand the implications of this change. As a result they have not done any forward contracting with private farmers in anticipation of any shortfalls of raw materials from the state farms. This results in the need to import raw material for the processing companies. If the processors had initially identified who the market was and how large it would be, they could have avoided shortages by forward contracting with private growers.

A market economy also means that if one cannot compete efficiently, one will be forced from the market. Many of the state farms and state enterprises are not economically or financially viable in the present market. Lack of financing is one reason why state farms cannot purchase inputs to grow product for the processors. Many state processing plants cannot access financing to purchase raw materials they need from the state farms. Private farmers generally want to deal on a cash basis. Therefore, some processing plants cannot contract with private farmers even if they wanted to.

### **Market Information Services**

Lack of market information begins at the farm level with the private farmer. Farmers need information prior to planting to determine whether or not rapeseed or any other crop will be profitable.<sup>34</sup>

A major missing link with farmers, middlemen, wholesalers, distributors, and retailers is up-to-date information on market prices of agricultural commodities. Poland has an extensive network of regional agricultural extension services (ODRs). Some ODRs have already begun to incorporate commodity prices and input costs into their monthly informational bulletins that farmers subscribe to. This information could be standardized and distributed through all ODRs.

Newspapers currently publish commodity price information in the financial section. Once participants begin to understand that this type of information is necessary to make business decisions, it would encourage the development of private sector agricultural publications catering to the needs of the agribusiness sector. The dissemination of information to the marketplace needs further review.

### **Export Facilities and Services**

A caveat of marketing is that if one cannot ship product, one should not produce it. If Poland is to compete successfully in the world economy, the GOP must take drastic steps to improve port facilities. Waterways and elevator storage facilities at Polish ports are a problem. There are three major ports with elevators: Szczecin, Gdansk, and Gdynia.

The port in Szczecin consists of two harbors: Swinoujscie for larger vessels, and the inner harbor of Szczecin for 20,000 ton ships (draft of 9.15 meters). The port in Szczecin also provides barge service to Berlin along the Odra River. The port has three elevators, all owned by the government. Two have a capacity of 5,000 tons, and one has a capacity of 50,000 tons.

The government has contracted out the service operations of the largest elevator for a two-year period to the Enterprise for Port Elevator Services (Przedsiębiorstwo Usług Portowych Elewator [EWA]).

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<sup>34</sup> Interview, private farmer, Mr. Bogdan Nowak, Koszalin, October 6, 1992.

EWA was privatized in 1991. It is a joint venture between the Port Authority and former employees. Employees own 55 percent of the shares, and the remaining 45 percent is owned by the Port Authority (the Ministry of Transportation is the founding body of the Port Authority).

The elevator equipment is old and requires modernization. The cost of repairs is to be financed from EWA's profits. However, EWA has only a two-year contract to operate the equipment. Activities at the elevator include receiving, storing, and loading and unloading grains, beans, oilseeds, and feeds. The elevator can load 100,000 tons per month. It has the capacity to semiclean, mix, and fumigate. It has seven inlets and outlets and can perform seven activities simultaneously. The weighing scales are considered precise (1 kilogram per ton maximum error). Management believes this elevator is one of the most flexible and efficient elevators in Europe.

There are several limiting factors to this operation. Shipping costs for large vessels increase significantly because they cannot enter the inner harbor because of clogged waterways (silt). Larger ships have to remain in Swinoujscie, and be loaded and unloaded by barge from Szczecin. This defeats the purpose of using larger ships to reduce unit costs of shipping. Even if this problem were corrected, EWA's operation would be limited because of the small storage facilities and the relatively low loading capacities. These facilities desperately need to be upgraded. EWA certainly has no incentive to do this if it has only a two-year contract.<sup>35</sup>

The port of Gdansk has a 7,000-ton elevator and services ships up to 8,000 to 12,000 tons (draft of 8.5 meters). It does not have a problem with waterways clogged with silt. Its major constraint is the small size of the storage elevator that significantly limits the size and number of vessels that can use this port. The GOP should immediately determine whether this facility is financially viable. Given the minimal storage facilities available, it is highly likely that it does not make sense to keep this port open. Gdynia is nearby and it has the capacity to service larger vessels.

The port of Gdynia has a 12,000-ton elevator and can load ships up to 55,000 to 60,000 tons with a draft up to 11 meters. The Morski Port Handlowy Gdynia S.A., manager of the Gdynia port and the 12,000-ton elevator, is a joint stock company wholly owned by the State Treasury. There are plans to privatize it by identifying a foreign joint venture partner. A business plan is being prepared, and privatization is scheduled for January 1993. There were no indications of potential joint venture partner prospects. The essential elements of the business plan are to:

- Create bonded warehouses;
- Create tax free zones;
- Establish joint ventures for port services;
- Create service centers (maintenance, repairs, and so forth); and
- Start a new ferry line to Scandinavian countries.

The 12,000-ton elevator at the Gdynia port is 70 years old. It has been named one of the three historical monuments in the city. Construction is in progress to install a US \$12 million grain-handling

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<sup>35</sup> Interview, Przedsiębiorstwo Usług Portowych, Enterprise of Port Services Elevator EWA, Danuta Niedzwiecka, October 9, 1992.

system to replace one that became nonfunctional because of age. The completed project will enable loading of 350 to 400 tons of product per hour. The project was scheduled to be completed by December 1992. However, funding is not in place to complete it.

The second stage of modernization includes construction of an additional 25,000-ton storage elevator. Management intends to establish a joint venture to finance this, and is seeking a foreign partner. The existing elevator has separate cells that can receive different types of grains simultaneously. It has fumigation facilities, drying and cleaning facilities, scales, and a laboratory for quality control testing. A temporary floating storage barge is used (12,000 tons) to increase present elevator capacity.

The Port Authority finds it difficult to keep the waterways and docks clean from silt. Present storage capacities at the port are exceedingly small. This makes loading a large vessel extremely time consuming, and therefore costly. The Port Authority should have increased storage capacity while modernizing the loading system.

The Port Authority is actively looking for joint venture partners with foreign capital to finance the necessary upgrades. It will be partnering with Central Soya, a U.S. firm, to build a warehouse and terminal for reloading animal feed and fodder for shipment to Czechoslovakia, Russia, and Byelorussia.

Agros, Rolimpex, and Polcop are three companies that currently ship rapeseed from Gdynia. In 1992, they shipped 34,000 tons of rapeseed and 18,700 tons of rapeseed meal. In prior years, the Port Authority shipped 100,000 to 130,000 tons of rapeseed from Gdynia. The Port Authority anticipates competition from the Rostock port in eastern Germany that has a 50,000-ton elevator. It will be able to service larger ships more efficiently.<sup>36</sup>

Polcargo International LTD, is one of the companies offering a complete range of technical services in all major areas of international commodity trade. Its head office is in Szczecin, with branch offices in Swinoujscie (bulk cargo sea port), Poznan (international trade center), Rzepin (large frontier crossing), and Rotterdam (largest port in the world). Polcargo has divisions servicing food and agriculture, chemicals and minerals, bulk cargo, and general cargo.

After 40 years of operations as a state-owned enterprise, Polcargo was privatized by employees in May 1992. During privatization, the organization was divided into several independent privatized units. Recently, Polcargo started a complete export and import service for its clients. It provides third-party inspection services, negotiates prices for cargo storage at ports, arranges correspondent banking relationships, and completes and processes all paperwork necessary for shipment of freight. This kind of activity is extremely important for small companies, as their knowledge about exporting and importing is normally limited. Last year Polcargo exported 300,000 tons of rapeseed.<sup>37</sup>

## **PRODUCTION CONSTRAINTS**

A market-driven production system means that one does not produce unless the producer has identified a market in which he can economically compete. A producer must therefore identify the costs

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<sup>36</sup> Interview, Morski Port Handlowy Gdynia S.A., Mr. Marusz Guminski, October 12, 1992.

<sup>37</sup> Interview, Polcargo, Szczecin, Mr. Zygmunt Makala, October 9, 1992.

of production that include labor, raw materials, technology, finance, policy, and regulation. Market reliability and stability are necessary in some or all of these areas to make production competitive.

The rapeseed industry in Poland lacks the necessary reliability and stability in the aforementioned areas for it to be economically competitive. The result is a decline in production, causing severe disruption for processors and for other participants in the system.

### **Farm Structure**

Poland's agricultural sector is comprised of 18.72 million hectares of arable land, or 60 percent of the country. Approximately 76 percent of this land is owned by the private sector. Polish private sector farms are predominantly small in size. Approximately 56 percent of farms have less than 5 hectares, and 82 percent of the farms have less than 10 hectares. Only 0.1 percent of farms have 15 hectares or more. Conversely, state farms average 4,000 hectares in size.<sup>38</sup>

Production of rapeseed on state farms decreased from 69 percent in 1988, to 66 percent in 1989. The state farms' market share of rapeseed production increased to 72 percent in 1990, and to 76 percent in 1991.<sup>39</sup> However, overall production of rapeseed by the public and private sectors declined during this period.

### **Cost of Inputs**

In the United States the fertilizer costs to produce one hectare of rapeseed is US \$98, or 42 percent of direct costs. This is compared to fertilizer costs in Poland of US \$146 per hectare, or 71 percent of direct costs.<sup>40</sup> The cost of superphosphate fertilizer in Poland has gone from US \$50 per ton in 1990, to US \$175 per ton in 1992.<sup>41</sup>

## **EXPORTS OF POLISH RAPESEED**

Dreyfus is a major purchaser of Polish rapeseed. It has a Polish company called Anco that purchases and exports rapeseed on its behalf. Several local trading companies sell their rapeseed to Dreyfus. Dreyfus provides prepayment to secure its position in the market, and ships much of the Polish rapeseed to the ConAgra plant in Mexico.

Agros is a major Polish trading company for grains and agricultural products and has been in business for four years. It is a major supplier to Dreyfus. It is undergoing privatization, with 30 percent

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<sup>38</sup> *Business Opportunities in Poland, A Guide to Agricultural Ventures*, Econolynx International Ltd. Ottawa, Canada, March 1992, p. 15.

<sup>39</sup> *Oilseeds and Products*, American Embassy, Warsaw, Poland, April 1, 1992, p. 15.

<sup>40</sup> *Regional State Farm Restructuring and Privatization, Worclaw, Poland*, Chemonics International Consulting Division, Washington, D.C., March 1992, p. H-34.

<sup>41</sup> Interview, Agricultural Sector Adjustment Program, Mr. Tadeusz Peczek, November 4, 1992.

of the shares remaining state owned because of a permit necessary for alcohol production. Agros obtains prepayment from Dreyfus. This enables it to prepay for rapeseed purchases from its suppliers. The six middlemen Agros purchases rapeseed from receive a commission of 5 percent. In 1992 Agros contracted through its middlemen for the purchase of 100,000 tons of rapeseed for export, but received only 70,000 tons because of the decline in rapeseed production and growers not honoring contracts.<sup>42</sup>

Rolimpex is a 40-year old state-owned enterprise that also purchases rapeseed. It should begin privatization in 1993. It is an oligopoly with activities in agricultural production, transportation, storage, and distribution. It has formed joint ventures with local partners for domestic activities in many areas, including food processing.

Rolimpex contracts with individual rapeseed farmers for product. It provides partial payments to farmers for the purchase of inputs. In 1992, some farmers could not meet their contractual obligations because of the drought. Rolimpex advised that there are no penalties in the contracts for nondelivery.<sup>43</sup> It sells its rapeseed to Dreyfus for export.

ConAgra is a transnational company that has an office in Warsaw to manage its import and export business. ConAgra's interest in Polish rapeseed is tied to its 800,000-ton oil-extraction plant in Mexico. In spite of the significant inconvenience of purchasing and shipping rapeseed from Poland to Mexico, ConAgra is undertaking this activity because it is profitable. ConAgra is also interested in purchasing Polish rapeseed to supply edible oil product to the Japanese market. In 1992, ConAgra expects to export 100,000 tons of rapeseed from Poland. It paid a contract price of US \$198-\$205 per ton. The current price being offered for Polish rapeseed is US \$230 per ton.

ConAgra purchases product from the State Grain Enterprise (PZZ), which has locations throughout Poland. ConAgra works most closely with the centers in Opole and Szamotuly. When entering into a contract with PZZ, ConAgra provides PZZ with a 40 percent advance after receiving bank guarantees from its U.S. bank (Chase).

ConAgra uses the Enterprise for Port Elevator Services (EWA) at Szczecin to load 23,000-ton ships. ConAgra would prefer to bring in larger ships. Problems mentioned earlier regarding silted waterways and insufficient storage capacity prevents it from doing so.

ConAgra uses Polcarga for third-party inspection work. Polcarga inspects moisture content, acid content, and oil content of the rapeseed. ConAgra had considered using Ukrainian rapeseed but was forced to reject it because of radiation and overall poor quality.<sup>44</sup>

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<sup>42</sup> Interview, Agros, Warsaw, Ms. Malgorzata Polchlopek, October 5, 1992.

<sup>43</sup> Interview, Rolimpex, Warsaw, Mr. Jerzy Michalowski, October 5, 1992.

<sup>44</sup> Interview, ConAgra, Warsaw, Mr. Robert M. Jarosinski, October 4, 1992.

## CURRENT TECHNOLOGY

The agricultural sector in Poland is labor intensive when compared to Western European countries.<sup>45</sup> One reason for this is the structure and dispersed locations of many small farms. It is also because of the inequitable distribution of machinery and equipment to state farms. Much of the equipment available is used inefficiently and is obsolete.<sup>46</sup>

There is a demand for appropriate technology using modern, energy-efficient agricultural machinery and equipment, particularly catering to the needs of smaller farms.<sup>47</sup> Most state farms have the equipment to grow, combine, dry, and store rapeseed. For Poland to compete in the international marketplace, some of this equipment will have to be replaced or updated.<sup>48</sup>

The oilseed extraction plants vary in their degree of technology, but most have pre-war extraction equipment. None of the extraction plants uses a solvent extraction method. The present process used adds benzene to the rapeseed after the rapeseed has been heated and crushed. This is done to recover the oil remaining in the crushed seed. The solvent extraction technology is a more modern system. The equipment is more reliable, more energy efficient (and therefore less costly), and has greater longevity.<sup>49</sup>

Seven of the eight plants also produce margarine, most with equipment purchased in 1989. The Bolmar plant located in Bodaczow has pre-war extraction equipment. A new building was constructed for new margarine-processing equipment, but the new equipment was never purchased because of a lack of financing, so the building sits empty. The company is operating at a fraction of its capacity because it lacks the cash flow to purchase needed raw material, and it cannot get financing from the bank.<sup>50</sup>

The Bielmar plant (Bielsko Biala) is operating at full capacity for margarine production. All of the extraction equipment is used to supply oil for the margarine operation, and so there is no extraction capacity available for refined oil production. There has been interest from a Polish company to purchase the Bielmar plant, but the workers would prefer to develop their own privatization plan.<sup>51</sup>

The Slaskie Zaklady Przemyslu Tluszczowego plant in Katowice is located in a region that does not grow rapeseed. It produces margarine from refined oil produced at other plants. The plant is operating at a fraction of its capacity because it has no money to purchase raw material. The plant has

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<sup>45</sup> *Business Opportunities in Poland, A Guide to Agricultural Ventures*, Econolynx International Ltd., Ottawa Canada, March 1992, p. 15.

<sup>46</sup> *Ibid*, p. 17.

<sup>47</sup> *Ibid*.

<sup>48</sup> Interview, State Farm, State Land Property Agency, 62-071 Konarzewo k/Poznan, Poznan, Mr. Jan Tadeusz Baier, September 30, 1992.

<sup>49</sup> *Investment Opportunities in the Oilseed Sector of Pakistan*, Ronco Consulting Corporation, Agri-Bi-Con International (Pvt.) LTD., draft October 21, 1991, p. 57.

<sup>50</sup> Interview, Bolmar, Bodaczow, Mr. Stanislaw Czuk, September 7, 1992.

<sup>51</sup> Interview, Bielmar, Bielsko Biala, Mr. Stanislaw Babinski, September 14, 1992.

large amounts of warehouse space sitting idle. The company presently has no marketing plan. A foreign company has expressed interest in a possible joint venture privatization. The employees had put forward a privatization plan that was rejected by their bank.<sup>52</sup>

The Wielkopolskie Zakłady Przemysłu Tłuszczowego Szamotuly plant (Szamotuly) is the oldest extraction plant in Poland (1910), and it is expected to be closed next year. A new US \$100 million oil extraction plant will take its place. This is the only plant that does not produce margarine. The refined oil is sold in bulk to local bottling or margarine plants.<sup>53</sup>

The Kujawskie Zakłady Przemysłu Tłuszczowego plant (Kruszwica) is the largest plant in Poland, processing 280,000 tons of rapeseed yearly. The plant manufactures margarine, and also sells oil to other locations for margarine production. This plant used to supply the Katowice plant with oil. It has ceased doing so because Katowice fell behind in payments. This plant has an excess supply of rapeseed. The manager indicated that the plant would hold it in storage in anticipation of price increases caused by product shortage.

## **MANAGEMENT**

The Polish rapeseed industry is experiencing a management crisis. The primary growers of rapeseed are the state farms. Their traditional market has been the domestic extraction plants. These linkages are crumbling because of the inability of the farms and processors to operate efficiently in a market economy, thereby forcing them to close. Management must reorient itself to the rigors of a market-led economy. This applies to state and private farms and to processors. Management decisions must be based on economic and financial principles. Marketing plans must be prepared to determine growing and production requirements. Cost accounting and financial analysis must be applied to determine if production can be competitive. No tradition exists in Poland to apply these principles. Few people presently in management positions already possess these skills. Management must move from basing decisions on traditions, toward making decisions on what makes economic and financial sense. Stated simply, if it cannot be done profitably, do not do it.

## **GOVERNMENT AND STATE-OWNED ENTERPRISE CONSTRAINTS AND OPPORTUNITIES**

The cost of fertilizer produced in Poland's state-owned enterprises has increased by 250 percent in the last three years.<sup>54</sup> The higher fertilizer price coupled with market uncertainties is causing

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<sup>52</sup> Interview, Śląskie Zakłady Przemysłu Tłuszczowego, Katowice, Mr. Ryszard Korczyk, September 18, 1992.

<sup>53</sup> Interview, Wielkopolskie Zakłady Przemysłu Tłuszczowego Szamotuly, Szamotuly, Mr. Zdzisław Andrzejewski, October 2, 1992.

<sup>54</sup> Ministry of Agriculture and Food Economy, Institute of Agriculture and Food Economics, Agricultural Market Agency, *Rape Production and Market Present Conditions*, June 1992, p. 11 (fertilizer cost per hectare, 1989 zloty 68,300, 1990 zloty 804,000, 1991 zloty 1,180,000, estimated 1992 zloty 1,180,000).

farmers to cut back on their fertilizer usage, further reducing crop yields.<sup>55</sup> The trend of continually rising input costs combined with market uncertainty is expected to continue. This will further reduce crop yields, resulting in less profit for the farmer. This will create a general crisis in agriculture.

Until recently the domestic rapeseed market has been at the mercy of the state-owned extraction plants. Many of these plants are reaching the point of financial insolvency. A few have indicated an interest in privatizing, and whether they will be able to operate as viable companies remains to be seen. Private sector traders, exporters, and processors have not yet been developed to replace the void created by the paralyzed SOEs. Even those enterprises that are doing the majority of domestic procurement, Agros and Rolimpex, are state-owned companies.

The state-owned farms and the extraction plants are finding it difficult to privatize. There is inconsistency in the GOP's attitude toward the entities, as evidenced by the functions and authorities granted to the Agricultural Property Agency versus the Ministry of Privatization. There is general confusion as to how to prepare a business plan and where to find interested partners to invest in a business.

The economic reforms of 1989 have meant a cessation of the constant flow of financial resources from the state budget and state-owned banks. PGRs and SOEs have been left to determine how to access the financing required to purchase needed raw materials. This has created a situation where the farms and SOEs are using available cash to operate on a day-to-day basis — because banks no longer want to provide financing — and are accepting below-cost prices from distributors simply to meet daily expenses.

Poland has a total grain and cereal storage capacity of 10 million tons. PZZ has major storage facilities (4.5 million tons). PGRs have 3 million tons, and rural cooperatives and collectives have 1.6 million tons.<sup>56</sup> Traditionally PZZ has been the major purchaser of rapeseed in Poland, buying from both the SOEs and private farmers. In 1989, it purchased 1.26 million tons, or 88 percent of that year's crop.<sup>57</sup> It is well-equipped with driers.

The state farms also have their own driers and storage facilities. They are currently working directly with the extraction plants, acting both as a producer of rapeseed and as a drying and storage unit. In some cases, PZZ has been cut out of the process altogether.<sup>58</sup> The traditional marketing links are changing. Farmers lack reliable markets and forward contracts with entities that can dry and store rapeseed. As a result, they are reducing their overall production of rapeseed and seeking alternative crops.

The Instytut Hodowli i Aklimatyzacji Roslin (IHAR) has three branches dedicated to genetic seed and plant research and growing of parent seed stock in Poland. Poznan works with rapeseed, Kraków

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<sup>55</sup> *Annual Report, Oilseeds and Product*, American Embassy, Warsaw, Poland, April 1, 1992 p. 15.

<sup>56</sup> Poland Agriculture Sector Adjustment Loan Supporting Volumes, Report No. P-5685-POL, Volume II, *The Agricultural Marketing and Processing Sector*, p. 128.

<sup>57</sup> *Ibid*, p. 126.

<sup>58</sup> Interview, Wojwzodkie Przedsiębiorstwo Przemysłu Zbozowo Młynarskiego (PZZ), Koszalin, State Grain Enterprise, Mr. Albin Badower, October 8, 1992.

with grains and fodder for animals, and Bydgoszcz with root plants (potatoes and beets). This institute has created the "double zero" rapeseed variety, which is low in uric acid and is of export quality.

For the rapeseed industry to maintain a regular annual source of "clean" seed stock, there needs to be a supply of "mother stock" to produce certified rapeseed. In conformance with GOP regulations this mother stock must be grown at the Institute for Plant Breeding and Acclimatization (IHAR). Because of budget constraints, funding to IHAR has been reduced and the agricultural land used by IHAR is to be privatized. There is concern as to how to continue the production of this mother stock. If it is not available, the quality of rapeseed will deteriorate as a result of cross pollination. This will cause the weakening of genetic materials, and will result in plants that produce less oil. The lack of certified rapeseed will be a major constraint to the growth of the industry.<sup>59</sup> The GOP presently does not allow the private sector to develop and sell original seed stock.

IHAR has been working on developing a 120-day spring variety of rapeseed and has had marginal success with this new variety because it produces 30 percent less seed than the winter rapeseed. The lower yield does not encourage farmers to plant the spring variety nor has IHAR placed spring rapeseed as a priority.

Research on a 120-day sunflower seed has also been conducted by IHAR at the Borowo k/Poznan research station. There are two Polish varieties, Lech and Wielkopolski, with a yield of 2 tons per hectare. They have a growing season of 145 days, which is still more than the desired 120 days. One of the difficulties with the Polish variety is harvesting, because the plant grows too high for the harvesting equipment. IHAR estimates 80 percent of the work to adapt a new variety to Poland has been completed. Another four to five years are required to complete the development of the hybrid.

IHAR tested, without success, two non-Polish varieties of sunflower: francosoli from Cargill and emil from Pioneer. Cargill is continuing to test varieties at the Poznan Agriculture University, Przybroda research station.<sup>60</sup> Cargill has planted 20 hectares on the state farm at Konarzewo k/Poznan to continue research on identifying a variety that is adaptable to Polish conditions.<sup>61</sup>

The dramatic increase in input costs has had an effect on the production of rapeseed. Unless the grower, PGR, or private farmer knows that the market price offers a profit on the crop, the crop will not be planted. The grower will seek a crop that provides a more certain profitable outcome.

One of the reasons the grower has continued to grow rapeseed in spite of market insecurity is its traditional use as part of a crop rotation program. Rapeseed's value is derived from the fertilizer that the farmer has used on it, and that remains in the soil after the crop has been harvested. The grain crop which is planted after the rapeseed, such as wheat or rye, which is the primary crop, benefits from the fertilizer already in the soil. This practice limits the production of rapeseed to the amount of grain to be grown. This further demonstrates the need to introduce proper cost accounting and financial analysis

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<sup>59</sup> Interview, Instytut Hodowli i Aklimatyzacji Roslin (IHAR), Institute of Plant Breeding and Acclimatization, Mr. Piotr Pokojski, October 4, 1992.

<sup>60</sup> Interview, Instytut Hodowli i Aklimatyzacji Roslin (IHAR), Institute of Plant Breeding and Acclimatization, Ms. Piotrowska Aleksandra, October 7, 1992.

<sup>61</sup> Interview, State Farm, State Land Property Agency, 62-071 Konarzewo k/Poznan, Poznan, Mr. Jan Tadeusz Baier, September 30, 1992.

tools to the farm level so that the farmers can make informed, logical business decisions based on economics.

Research on using rapeseed oil to upgrade (ecologically) diesel fuel is in its first stages of development. The rapeseed used in this industry can be grown on degenerated soils that would not be used to produce crops for human consumption. This would be an excellent method to revitalize these soils.<sup>62</sup>

Experiments using rapeseed as a monoculture have shown a reduction in yield after five years. If, however, the monoculture is broken for two years, the same land can again grow rapeseed for an additional five years before experiencing another reduction in yield.<sup>63</sup>

The development of a 120-day spring rapeseed crop is vital to the economic viability of this industry. Growers could realize a return on their investment within three months. This is a major consideration when compared to winter rapeseed, which has a 10-month growing period. Additional investigations should be undertaken to determine whether the 120-day variety can be utilized given Polish climactic and meteorological conditions.

The development of a 120-day sunflower seed is important to the oil industry. It is a high value-added oil that can be grown economically. Cargill is actively looking for varieties that are suitable to Poland, and these should be forthcoming. In 1985-1986, for example, Russia produced 28 percent of the total world sunflower seed production (5 million tons).<sup>64</sup> Therefore there is every indication that sunflower can be grown successfully in this region.

## FINANCIAL CONSTRAINTS

### Farmers

Private farmers have traditionally remained outside of the formal banking sector, particularly because the banks were viewed by them as an extension of the central government. Private farmers have developed a practice of self-financing. On one level, farmers are benefitting from this as they can avoid the necessity of borrowing money at interest rates of 50 percent. They are also able to avoid newer bank requirements of preparing a farm plan and business plan, for which they lack the skills. However, farmers have also suffered from this practice, as the ability to expand farm activities or to modernize equipment on a timely basis is tied directly to the cash he has available in his pocket.

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<sup>62</sup> Interview, Instytut Przemysłu Mięsnego i Tłuszczowego, Institute for Meat and Oil Industries, Mr. Arthur Katzer, November 4, 1992.

<sup>63</sup> Interview, Main Academy of Agriculture-SGGW, Department of General Agriculture and Plant Cultivation, Ms. Alicja Gawronska, October 10, 1992.

<sup>64</sup> *USSR Oilseed Production, Processing, and Trade*, U.S. Department of Agriculture, Foreign Agriculture Economic Report Number 232, September 1987, p. 2.

## **State Farms**

Since the economic reforms of 1989, state farms have come under increasing attack as they are such an obvious symbol of the previous system. Their financial viability within a market-led economy is doubtful, particularly because of the high levels of outstanding debt. As a result, banks have ceased lending to them. Farms are then unable to purchase inputs. Production potential has declined, further eroding their financial position. Many farms have ceased repayments to banks on outstanding loans because they simply do not have the money to repay them.<sup>65</sup> Financial constraints are causing these farms to operate on a one-day-at-a-time basis.

## **Cooperatives**

Cooperatives are in a position similar to that of the state farms. Many have high levels of debt, and in their present forms are not financially viable. Banks have ceased most lending activities to the cooperatives because of an expected change in the cooperative law. Unfortunately, the law has been under review for almost two years without an indication of when the GOP will finish with the new legislation. As a result, the cooperatives are being forced to finance all of their activities from remaining working capital. Because of the financial insolvency of the state-owned enterprises, which are the traditional outlets for the cooperatives, the financial position of the cooperatives will continue to deteriorate as the SOEs are unable to pay for merchandise.

## **State-Owned Enterprises**

State-owned enterprises, if operating for profit and are market driven, face the same financial constraints as private business. Cash management, debt financing and cost of credit are issues, as well as the need to have necessary financial information — profit and loss statements and a business plan — to make sound business decisions. If these SOEs are competing with private sector business under different rules, then they are restraining the private sector.

## **Government of Poland**

Clear collateral rights prevent banks from providing credit to many potential customers. The 1934 Civil Code that governs these collateral rights was adapted for SOEs and cooperatives and does not protect private ownership rights. The GOP must revise the collateral laws so that banks' rights will be protected, thereby increasing the willingness of the financial institutions to expand lending activities.

The GOP must provide incentives to promote business development. Tax incentives and a stable and reasonable tax environment are required. The GOP should develop free trade zones with on-site utilities and infrastructure tailored to investors' needs. Reasonably priced and accessible transportation, customs facilities, and a tax free status are a few examples of the needed improvements.

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<sup>65</sup> Interview, Państwowe Gospodarstwo Rolne Michalow, Zamosc, Mr. Andrzej Kitlinski, September 7, 1992.

## CHAPTER FIVE

### PROMOTION OF THE EDIBLE OIL INDUSTRY IN POLAND

#### PRIVATE SECTOR REPRESENTATIONS TO GOVERNMENT

Poland does not yet have private sector lobbying groups to represent the interests of farmers, middlemen, processors, distributors, or retailers. The few groups that represent farmers, such as Rural Solidarity and Samoobrona, are more closely affiliated with political parties. There is no effective relationship between trade associations and relevant government agencies. Open and formalized involvement of the private sector in policy formulation is limited. If there is private sector influence it has taken the form of special pleading to establish preferential treatment for a few. A policy dialogue with lobbying groups representing the agribusiness sector is necessary so that the industry is not governed by policy that adversely affects the sector or constrains domestic agribusiness investment.

#### PRIVATIZATION

Privatization was intended to open the economy to private investment-led initiatives. This has not happened. The agribusiness SOEs are reducing their output because of the confusion during the privatization process and lack of working capital during the transition phase. In the sectors studied (rapeseed and horticultural crops), related industries (input suppliers, middlemen, wholesalers) have been adversely affected by the slow rate of privatization.

#### BUSINESS ORIENTATION

Management of SOEs still operates as though it were operating within a protected environment rather than a free market. The knowledge of the marketplace is limited. Marketing is generally based on factory gate sales, and what sells is low cost margarine with consumer sensitivity to quality. Therefore, management decisions have been to place all available raw material, in the case of rapeseed, into margarine. This decision was made in 1989 when the majority of the margarine equipment was purchased for the SOE extraction plants, and has not changed.

A basic principle of operating a successful business is to produce only when there is a profit. SOEs are producing products because they sell, rather than considering what can be sold profitably in large volumes. Market penetration is not a sport, it is based on profit. The art of marketing without profit would be short lived. Street vendors know this principle and apply it daily to their businesses, yet budding small businesses and SOEs have not fully grasped the impact of dealing with larger markets on a profit-only basis.

Businesses here do not investigate a market to determine what will sell at a profit. One must first understand how to calculate profit. A business plan showing a reasonable payback period on all investments, including payment of wages plus a profit satisfactory to the investors, is a good starting

point. Second is testing the market, placing the product to be sold in a small regional market before starting what one "believes" will sell without any knowledge of market "ownership" (consumer acceptance and brand recognition). If the test marketing of the product is satisfactory, then one would proceed with testing a larger consumer base.

### **DEBT SERVICING**

SOE management realizes the need to manage cash flow, but management does not know how to accomplish this. Some SOEs have been servicing their debt, but most have debt that will have to be paid out of the sale of assets when privatizing. To understand cash flow and debt servicing, it is necessary to have a monthly profit and loss statement and a cash flow statement. The yearly demand for operating capital has peak months (that is, purchase of raw material, inventory of packaging material, finished goods in inventory), and these peak months' cash requirements have to be planned for in advance. When and how debt is serviced is another element of the cash flow statement. Many businesses can be profitable, but without cash flow management and debt servicing they will find they have no money to operate and will be forced to close.

### **BUSINESS PLANNING**

The most difficult aspect of any business, and the most important, is developing a business plan. The business plan must be profit oriented. It makes a profit through the goods and services it provides, and this is demonstrated in the plan. The business plan describes the business and location, has an analysis of the market and competition, lists assets (equipment), shows financial information (balance sheet, profit and loss statement, cash flow statement) and reviews personnel (management, support personnel, employees). It will show past performance and project into the future.

### **STATE FARMS**

Many state farms are not privatized and are in various stages of restructuring. Management of the PGRs are required to switch from operating in a centrally planned economy to a market-driven, profit-oriented economy. They have to develop a restructuring plan based on this new system, the result of which is general confusion. The farm employees thought privatization meant they would have ownership of the farm, and are sometimes disappointed to learn otherwise. Since the PGRs started operating in the new system, they must find their own market and work with their own resources. Large farms must sell their crops as soon as possible to pay for the inputs required to grow the crops. The SOE processing plants that were the marketing outlets for the PGRs have their own cash flow problems, causing the PGRs to seek other buyers. The buyers with cash pay less for the commodity, and this gives the PGRs less operating capital. Therefore, fewer inputs are purchased, debt repayments are not made, and farm output is reduced. (This year Poland will import 1.5 million tons of grain.) Financial planning has all but stopped. Farm plans are not being done and the farms are operating on a day-to-day basis. Poland has the capacity to be self-sufficient in grains and oilseeds at the farm level. The missing linkages are to the market place.

## **COOPERATIVES**

There is uncertainty concerning ownership of cooperatives. There is a new cooperative law under consideration, but until it is passed no one knows what is allowable. Under the old law, privatization is not addressed and cooperatives cannot be forced to privatize or liquidate. If the cooperative decides to liquidate, the assets revert to the state treasury after members receive the value of their initial investment.

Cooperatives, like PGRs, are not market oriented. Managers often lack the necessary skills to operate in a market-driven, profit-oriented system. They are subject to the same conditions as PGRs in needing to sell their crops at harvest to have needed operating funds. Because of a lack of market information, the cooperatives grow what they can afford to grow from available cash funds, and what can be used or sold locally. This further reduces farm output for needed crops such as oilseeds and grains.

Poor debt management and lack of equity financing are issues most cooperatives are facing. They are in debt and do not know how to manage that debt. Equity financing is not available as a source to finance their debt because of the question of ownership of assets. Management rights are an issue with cooperatives, because the members can decide if they want to adhere to a management decision or eliminate management. It is difficult, for example, to fire a member employee. There needs to be a clear distinction between owner and employee rights, such as with cooperatives in western countries.

## **STATE-OWNED ENTERPRISES**

The operational focus of the SOE extraction plants is diffused and oriented more toward privatization, rather than to what is happening to the industry. A few plants are operating at reasonable levels, but none have reoriented their thinking toward operating profitably in a market economy. The problem of raw material availability and price is universal. Input costs for farmers have increased. Domestic output is less than 600,000 tons, and the cost of rapeseed in the international market has increased.

The shortage and higher price of rapeseed for the SOEs has reduced the extraction plant profits, which should lead to maximizing marketing and production efforts to counteract the shortage. This is not occurring. This will place the plants and industry in an even less competitive position.

For Poland to become competitive in the international oilseed market, the industry will need to streamline operations, from the cost of inputs, to extraction plant efficiency, to sufficient market penetration.

In 1989, construction was begun on a new SOE extraction plant in Szamotuly. It started as a US \$100 million turnkey project with a Yugoslavian firm. There are not funds to complete this project. Given Poland's move to a market economy with private sector activity, the justification for continuing this project should be based on a feasibility study. If the study indicates that it could be profitable, then it should be privatized, with the new owners finishing the project to their specifications.

The SOE plant in Katowice does not have extraction capabilities and only produces margarine. Rapeseed is not grown in the area. The margarine equipment is considered modern, and has operated

at a fraction of its capacity. Before privatizing this SOE at a fraction of its value, consideration should be given to placing the margarine equipment in the Szamotuly plant as part of a vertically integrated facility.

## CHAPTER SIX

### RESTRUCTURING THE OILSEED COMMODITY SYSTEM

#### RATIONALE

In 1991 it cost approximately US \$249 to produce 2.23 tons per hectare of rapeseed. The costs in 1992 were similar, yet there was a 5 percent reduction in yield (2.12 tons per hectare in 1992) because of a reduction in the amount of inputs used (fertilizer and pesticide). The reduced level of inputs was caused by lack of operating capital and higher input costs. The 1991 and 1992 costs represent an increase of more than 100 percent over 1990 per-hectare costs.<sup>66</sup>

The 1992 international market price per ton of seed is US \$230 per ton.<sup>67</sup> Yields must increase from 2.12 tons per hectare in 1992 to 1989 levels of 2.78 tons per hectare to increase the profitability of rapeseed production.<sup>68</sup> From the basic parameters, we can project a model and a system to reverse the trend in the Polish oilseed commodity system, from one that is unprofitable to one that earns significant foreign exchange.

Based on overall world demand and on the recent decision of the European Community to reduce the production of oilseed by 15 percent (5,128,000 hectares), with an additional reduction of 10 percent each year for the next several years,<sup>69</sup> there is an opportunity for Poland to enter the world oilseed market. However Poland's rapeseed production is decreasing annually, and it is reported that two oil extraction plants have ceased, or will soon cease production (Bodaczow and Gdansk), because they are not financially viable.<sup>70</sup>

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<sup>66</sup> Ministry of Agriculture and Food Economy, Institute of Agriculture and Food Economics, Agricultural Market Agency, *Rape Production and Market Present Conditions and Prospects*, June 1992, p. 11 (zloty conversion at 14,500/US\$).

<sup>67</sup> Interview IBA Corporation (ConAgra), Mr. Robert M. Jarosinski, October 4, 1992.

<sup>68</sup> Ministry of Agriculture and Food Economy, Institute of Agriculture and Food Economics, Agricultural Market Agency, *Rape Production and Market Present Conditions and Prospects*, June 1992, p. 11 (zloty conversion at 14,500/US\$).

<sup>69</sup> *Gazeta Wyborcza* No. 276, November 24, 1992, p. 14.

<sup>70</sup> *Ibid.*

## CONCEPTUALIZING THE MODEL

### Contract Farming

A secure market that ensures quantity and price stability for both the grower and processor is necessary to have a successful oilseed commodity system. A forward contract (contract farming) would serve as a reciprocal arrangement for the farmer and processor, and begin to address some of the constraints caused by lack of planning.

### Oilseed Procurement Center

Because Poland's total rapeseed cultivation and per-hectare yield is declining, and per-hectare costs are increasing, a 3,000-ton per day oilseed processing plant described in Chapter Seven of this concept paper cannot rely on the current domestic production to meet its annual oilseed requirements. Therefore, the project plans to establish an oilseed procurement company that will play a major role in fostering the development of oilseed production by establishing a backward linkage between farm production and the solvent extraction plant.

When planning the procurement program, the procurement division will have to correct or bypass the existing deficiencies in the system, such as lack of sufficient inputs for the production of rapeseed and use of farmer contracts, insofar as it affects the procurement needs of the plant. Therefore a full-scale effort incorporating forward-purchasing contracts with farmers, oilseed (hybrid) producers, and other farm input supply programs, and ensured availability of critical farm machinery and extension services, will have to be put in place to assist in expanding oilseed growing in key areas.

The business activities to be implemented are based on purchasing sufficient oilseed to supply an extraction plant with a capacity of 720,000 tons per year. To accomplish this, the procurement unit will need to purchase and sell raw oilseed at a profit to cover the expense of farm input supplies, extension service and credit, and provide investors a return on investment. Each business activity conducted by the procurement unit will act as an independent profit center. When the unit is required to supply farm inputs (seed, fertilizer, herbicides, and pesticides), the purchase price of the inputs and the selling price to the farm will have a sufficient margin to cover the cost of this activity (personnel, credit, warehouse space) and earn a profit. The same cost principles apply to custom farm services, and will be sufficient to finance operating expenses and investment costs, and earn a profit. Some services include use of farm equipment for planting, tillage, or harvesting. Cleaning, drying, and storage will be done on a weight basis, with the cost per kilo for these services being sufficient to finance all of the expenses, as shown above, and earn a profit.

The oilseed procurement company will establish quality control standards. These standards will be outlined in the forward contracts and put into effect when the oilseed is purchased at the procurement company.

The oilseed procurement company will help develop the production of the sunflower industry in Poland by promoting continued research to adapt a variety suitable to Polish conditions, and by promoting on-farm testing of potential varieties. Pioneer Hi-Bred International, for example, has had experience growing sunflower in locations with similar conditions to Poland, and is interested in starting a pilot

program to test its varieties in spring 1993. Pioneer expects a yield of two tons per hectare using its early hybrids and a desiccant.<sup>71</sup>

Extension services are an important aspect of the program to ensure the viability of the procurement unit. All technical assistance needs will be provided to the growers to facilitate the introduction and transfer of modern technology for oilseed development.

An operating line of credit for the oilseed production and procurement company is needed to finance the above-mentioned business activities, research, extension, and marketing service. The credit plus interest is to be repaid when the oilseed is sold. The farmer who uses the business services will be under contract to sell his oilseed to the company, and the cost of the business services (inputs) used will be deducted from the payment he receives for the raw seed delivered. If the farmer does not sell sufficient oilseed to pay for the business services provided, then the penalty clause in the contract will be enforced and legal proceedings initiated to recover losses from the grower. If the grower is an SOE, then a guarantee of payment for business services needs to be provided in advance of using the business services.

## Marketing

World demand for rapeseed is such that Poland could export more than it does at present. The world production of rapeseed for 1992 is estimated at 26 million tons, with Poland's production estimated at .8 million tons. Both Japan and Mexico have extraction facilities for oilseed (estimated at 1.8 million tons) and lack sufficient raw material. Because of the demand and attractive price of rapeseed on the export market, traders are exporting Polish rapeseed. The SOE extraction plants have been left with insufficient raw material. To protect the SOE oil processing companies, the GOP now requires an export license to export rapeseed, effective as of October 1992. In a true free market situation, the SOE extraction plants would be forced to compete for the available domestic rapeseed, or they would have to import product to satisfy their production needs.

The oilseed production and procurement company will be established in traditional rapeseed growing areas that lack a market that provides the farm with both volume and price stability. The company will provide the market stability by contracting with the grower, and will export the raw oilseed grown under contract, increasing production to a volume of 720,000 tons per year to satisfy the requirements of an extraction plant discussed in Chapter Seven on an intervention strategy (see Diagram 6.1).

The export marketing service of the oilseed production and procurement company will establish a strong linkage with the export market. This linkage will be in the form of a commercial relationship between the procurement company and the end user located in another country (Mexico). All efforts will be made to reduce fees and commissions by dealing directly with the end user.

The domestic marketing services of the oilseed production and procurement company will begin testing the domestic refined oil and feed meal (by-product of the crushing) by working with a domestic extraction plant on a "custom pack" basis. The domestic extraction plant will receive oilseed from the

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<sup>71</sup> Interview, Mr. Tom Heaton, Sunflower Business Director, Pioneer Hi-Bred International, Inc., Woodland, California.

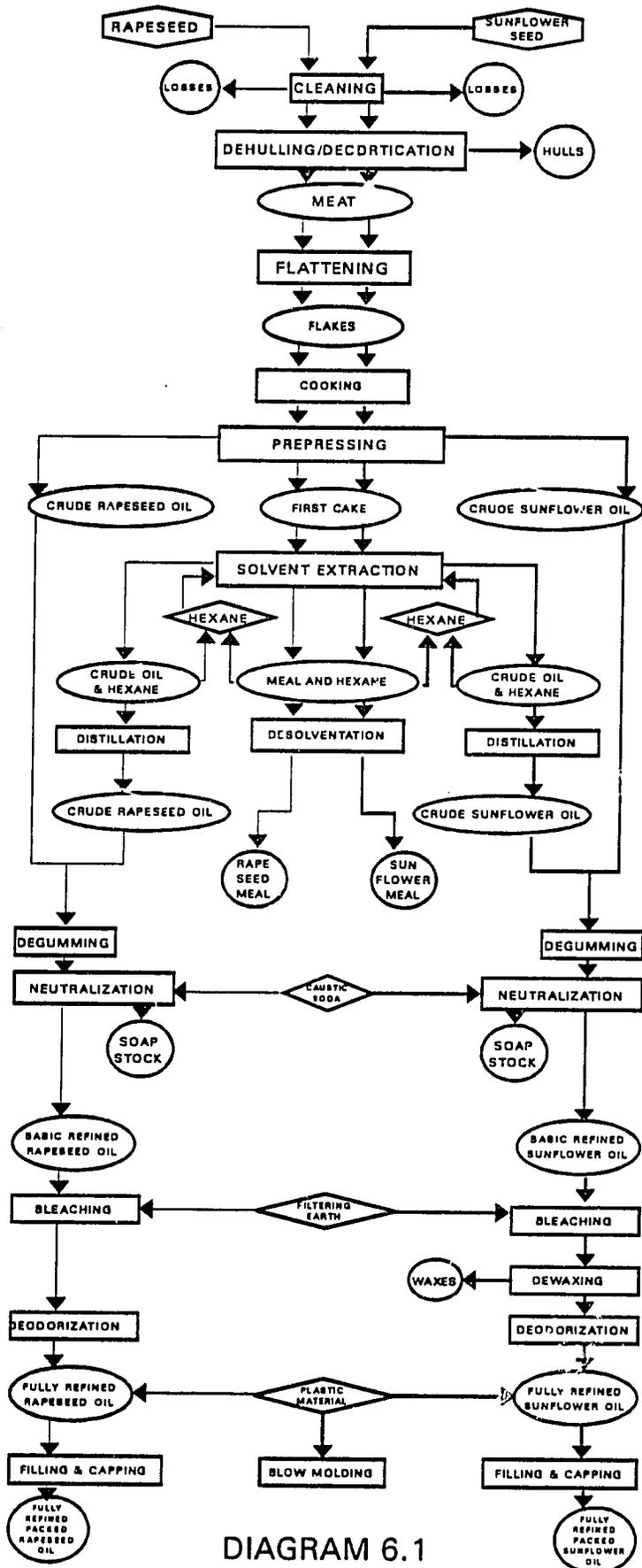
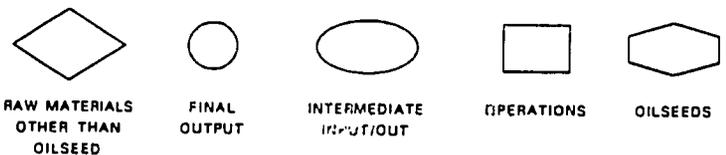


DIAGRAM 6.1



oilseed production and procurement company, and, for a processing fee, will produce branded (brand designed by the company) and bottled refined oil and margarine. The meal from the oilseed crush will go to a compound feedmill to be converted into a livestock meal on a "custom pack" basis similar to the arrangements with the extraction plant. The branded products (bottled refined oil, margarine, and livestock feed) will be test marketed initially in the domestic market, in preparation for the solvent-extraction plant discussed in Chapter Seven in the section Production and Procurement Company.

### **Geographic Focus**

The oilseed production and procurement company's geographic focus will be concentrated in six voivodships. Four are located in the northwest part of the country: Szczecin, Pila, Koszalin, and Gorzow. The combined production of rapeseed in 1989 of these voivodships was 314,000 tons, and the state farm grain storage capacity of these voivodships is 716,000 tons. Two voivodships, Elblag and Olsztyn, located in northeast Poland had a combined production of 200,600 tons of rapeseed in 1989, and the state farm grain storage capacity of these voivodships is 466,700 tons.<sup>72</sup> The rationale for selecting these areas is based on the traditional growing of rapeseed in these areas, lack of a marketing outlet (no extraction plant in the voivodships), predominance of state farms, proximity to a port for export, and the closing of the Gdansk crushing plant, which had been a major buyer of rapeseed in the North Central area of Poland.<sup>73</sup>

### **Management**

The general manager, responsible to the investors, will manage all phases of implementation starting with the oilseed production and procurement company. The manager is the key figure in the success of the program and should be well qualified in business management, agriculture, food processing, and international trade.

The purchasing manager will report to the general manager, and will oversee all procurement (oilseed, farm inputs, farm equipment) and is responsible for all contracts needed for the purchases. The purchasing manager will be a certified accountant and will prepare all financial documents required for the business.

The extension manager will report to the general manager, and will be responsible for all technical assistance needed to increase yields and profitability to the grower through the transfer of appropriate technology. The extension manager will be the principal person to oversee the introduction of sunflower, mono cropping of rapeseed, and development of a 120-day spring rapeseed. The extension manager will develop and implement a strategy to increase the area under oilseed cultivation. The rest of the staff will be divided between two procurement centers.

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<sup>72</sup> Poland Agriculture Sector Adjustment Loan Supporting Volumes, Report No. P-5685-POL, Volume II, *The Agricultural Marketing and Processing Sector*, p. 124 (production: Szczecin, 137,500 tons; Pila, 45,700 tons; Koszalin, 73,400 tons; Gorzow, 57,400 tons; Elblag, 102,000 tons; and Olsztyn, 98,600 tons), p. 128 (storage: Szczecin, 264,900 tons; Pila, 63,500 tons; Koszalin, 188,600 tons; Gorzow, 199,000 tons; Elblag, 206,700 tons; and Olsztyn, 260,000 tons).

<sup>73</sup> *Gazeta Wyborcza* No. 276, November 24, 1992, p. 14.

## BUSINESS INTEGRATION

A market analysis will first be undertaken to understand the needs of the domestic and international oilseed industry. The model begins with developing a source of raw material in two northern areas of Poland for the oilseed export market, increasing the volume to justify a 720,000-ton per year oilseed extraction plant. Preliminary studies indicate there is ample market demand and profit potential for the export of rapeseed. As domestic and export sales are increasing to the desired volume, strong international linkages will be made for the sale of domestically refined oil when the extraction plant is established.

Farm production needs include credit and market stability. Credit can be provided in the form of inputs and services to be paid for by the farmers out of proceeds from oilseed sales. Market stability will be established by forward contracting with the oilseed production and procurement company. When farm needs are met, the yield per hectare will increase, and hectares under oilseed cultivation will increase as a result of increased profitability. The conceptualized model will satisfy farm requirements to produce oilseed. This will be done on a business basis that will ensure continuity of the farm program and an increased supply of oilseed raw material for the export market. Sales will generate foreign exchange earnings for Poland, increase employment and rural income, and make appropriate use of farm assets.

The assembly, drying, storage, and shipping needs of the model are the next step after farm production, and are a critical business planning factor. State farms have the facilities to take the oilseed after harvest, and clean, dry, and store it on the farm. The model will first consider using these facilities. However, the extension manager will need to determine if the facilities on the state farm are adequate to maintain a satisfactorily high quality product, and determine if the farm management follows proper storage techniques. If the farm facilities are not suitable or available, then alternatives will be studied, each requiring its own feasibility study. It may be necessary for the oilseed production and procurement company to own and manage its own assembly, cleaning, drying, and storage units.

Custom processing (extraction and bottling) will be undertaken by the general manager to develop the Polish market for branded products (bottled refined oil and margarine) and to consider export possibilities for these products. The initial volume to be custom processed will be sufficient for a test market study in one Polish city to measure consumer acceptance and determine product distribution of the branded products. A similar study will be undertaken concentrating on the export of branded products. The general manager will also conduct an export market study for the export of bulk refined oil using custom processed bulk oil. This study will be important to the success of the extraction plant once it has begun operations. Market testing is an important component of the business plan and profitability of the company. If the market test is negative, then the activity will not take place.

Vertical integration will be the goal of the model — from the farm to the consumer. The concept is to begin with the export of raw oilseed by establishing an oilseed production and procurement company, and increasing the volume until it has reached a level that will justify the extraction plant. While production is increasing, custom packed branded product will be test marketed for domestic consumer acceptance, and test marketed in the export market for bulk refined oil. The general manager will direct the vertical integration process, focusing equally on farm-level oilseed development and on refined oil product development.

A feasibility analysis will be done that will include financial projections and a business plan before starting any phase of the model. There will be on going financial reports indicating the

profitability of the oilseed production and procurement company once it is operational. The model is a business and must provide a return to the investors.

The business will be established as a private liability company. The ideal arrangement would include both Polish and foreign capital, with the foreign investor representing an end user of oilseed (such as ConAgra, Dreyfus, or Cargill), or an expert in oilseed production (Pioneer), in combination with an end user of bulk refined oil. The suggested breakdown of ownership has the obvious advantage of securing the domestic market for oilseeds grown and processed in Poland and establishing linkages with the export market.

The estimated capitalization for the project is US \$100 million. The financing would be phased in as the project develops.

The development and testing (Phases I, II, and III) will begin by testing the crop production cost sharing mechanism by supplying farmers (private and PGRs) under contract with inputs and management services, to improve the profitability of the grower and to increase the volume of rapeseed under cultivation. The farmers' link to the marketplace will be the contract with the company, and it will also be the component needed by the PGRs to privatize in a rational manner. The oilseed production and procurement company would consider the privatized PGRs becoming a shareholder. The procurement company will also consider purchasing and leasing OE assets when appropriate.

## **CHAPTER SEVEN**

### **INTERVENTION STRATEGY FOR THE OILSEED INDUSTRY**

#### **ROLE OF GOVERNMENT**

Government bureaucratic constraints must be eliminated by the minister responsible for Poland's private sector development, serving as an ombudsman or as a bureaucratic clearing house. Examples of constraints include remission of import and export duties on supplies and equipment and removal of export and import barriers on product.

Tax incentives, such as an income tax holiday, are necessary until the company reaches a breakeven point (profit and loss). The tax incentives should continue for an additional five years, allowing the company to repay its start-up capital and to build up capital reserves for an expansion program.

#### **FINANCE**

A financing issue exists regarding the cost and availability of credit for businesses. Small businesses generally cannot access financing here, but larger businesses are sometimes able to obtain credit. The model being introduced will provide the financing of inputs through the procurement company to circumvent this problem. To provide this credit, investment tax credits equal to the cost of interest are required. Input supply is a horizontally integrated agribusiness that is part of the vertically integrated farmer-to-market system. A major factor in making the sector viable is supplying the correct input at the right time. By securing this segment of the link and by providing a guaranteed market at a predetermined price, the grower of oilseed can have a profitable operation.

#### **PRODUCTION AND PROCUREMENT COMPANY**

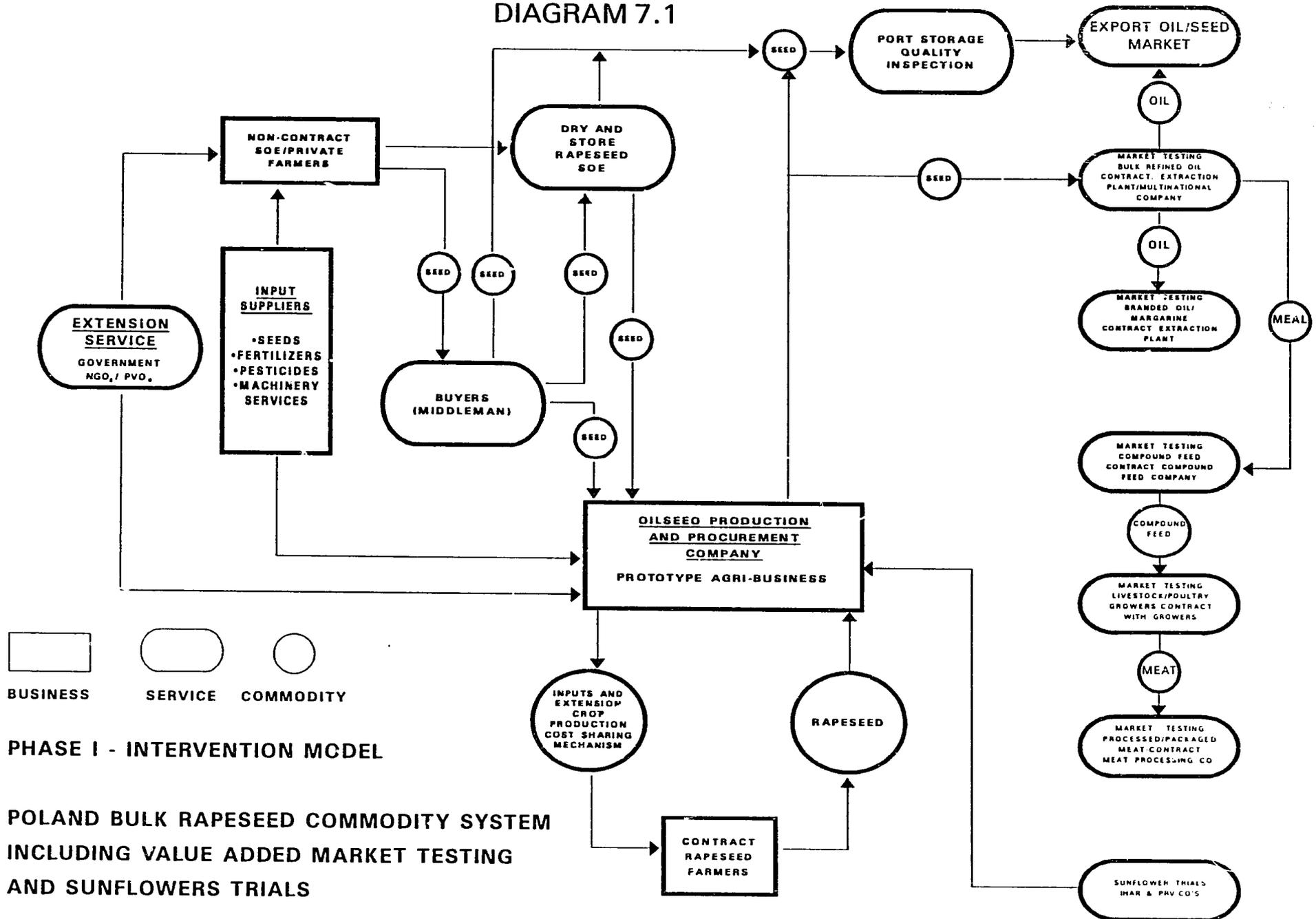
Phase I intervention will test and develop agribusiness linkages leading to a solvent extraction plant, and begins with an oilseed production and procurement company. The objective of the company is to transform the unprofitable domestic oilseed sector into one that will operate profitably and earn foreign exchange (see Diagram 7.1).

Farming output per hectare will increase by the use of the farmer contract as it will specify the production inputs to be used on a per-hectare basis. The company's extension manager will assist the farmer in using the appropriate technology as the inputs are used on the farm.

The assembly, drying, and storage of farm output is critical for maintaining oilseed quality. There is a possibility that the company will not have to invest in these facilities since the PGRs have drying and storage facilities on the farms. The company will have to determine if the PGRs have the appropriate drying and storage technology.

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DIAGRAM 7.1



PHASE I - INTERVENTION MODEL

POLAND BULK RAPESEED COMMODITY SYSTEM INCLUDING VALUE ADDED MARKET TESTING AND SUNFLOWERS TRIALS

During Phase I there will be ongoing testing and development of product in the domestic and export markets to be certain that the highest price is obtained for the oilseed raw material.

A contract will be established with growers for rapeseed production and will serve as the first link in a vertically integrated farmer-to-market system. The company will provide the farmer under contract with inputs and management services that will increase the farmers' yield per hectare, resulting in a better-managed and more-profitable farm business.

A contract will be established with a multinational firm for export of oilseed and will be the linkage from the oilseed production and procurement company to the market place.

A contract will be established with an SOE extraction plant, and will provide the linkage to the domestic and export markets for a branded refined oil that can be placed in bottles, made into margarine, or sold as bulk oil. These products will allow testing of the domestic market for consumer acceptance, with main stream production not starting until Phase III, after the crushing plant is in operation. The contract will also provide the linkage for testing of the bulk oil meal market. The main stream oil meal sales begin in Phase II, at the same time the oil crushing plant begins operation.

A contract will be established with a multinational firm to market bulk refined oil, and this will serve as the link from the custom crushing plant to the bulk refined oil market place. A desirable outcome of the contractual relationship will be the multinational becoming a shareholder in the extraction company. This scenario would allow for one partner to market the bulk refined oil in the export market, while another partner (Pioneer) would oversee the production of the oilseed domestically. Main stream marketing of the bulk refined oil commences in Phase II when the crushing plant is in operation.

A contract will be established with a custom feed company to produce a custom packed compound feed. This will serve as the linkage for testing the compound feed market in preparation for using the feed meal by product after the extraction plant has removed the oil from the seed. The crushing will start in Phase II. The contract with the custom compound feed operation will commence in Phase II and continue until Phase IV, when the compound feed division begins production. The new compound feed division will supply feed meal to the satellite livestock and poultry growers.

A contract will be established with the livestock and poultry growers. They will use the compound feed from the custom feed company both to check the quality of the compound feed and to serve as the linkage to test the livestock and poultry feed market.

A contract will be established with a meat-processing and -packaging company that will use the meat supplied by growers who use the compound feed from the custom feed company. This will be the linkage to test the domestic and export packaged meat market. The meat processing and packaging division will begin in Phase IV using satellite growers of livestock and poultry.

### **SOLVENT EXTRACTION PLANT**

The solvent extraction plant will commence operations after there is sufficient volume of raw oilseed (720,000 tons), linkage to the export market place (relationship established with a multinational or user of bulk refined oil) and capital available. The business plan will have been finalized, and the GOP will have removed constraints and provided financial incentives.

Phase II uses the established linkages to create the solvent extraction plant, and continues to develop linkages for branded and custom packed product (see Diagram 7.2). The oilseed production and procurement company has developed the linkages with the grower, establishing a solid base to produce the raw material needed for the extraction plant. More importantly, the sector is no longer failing; it is growing and profitable. The rapeseed producers are making a profit and have had management assistance to develop their own farms. They are linked to the oilseed production and procurement company with a contract that provides them with a secure market, inputs, and management assistance. This linkage with the company has given the PGRs the opportunity to privatize and operate as profitable private businesses. Suppliers to the oilseed production and procurement company will be given the option to participate in the ownership in the redefined oilseed production and procurement company, which now will include extraction and value-added facilities.

Oilseed processing is the major value-added activity in the vertically integrated business. Using the most up-to-date techniques for solvent extraction, the oilseed is processed and the oil is removed from the seed.

The oilseed production and procurement company is now a vertically integrated part of the extraction plant, and operates as a division of the larger company. The ownership of the company has been defined and linkages developed with the market place. A business plan is in place and decisions are based on the approved business plan. All financial documentation, cash flows, profit and loss statements, and balance sheets are part of the business plan. Consideration has been given to leasing or purchasing the assets of SOE extraction plants, warehouses, elevators, and equipment, keeping in mind that old technology cannot be retrofitted.

The geographical production area and location of the extraction plant has been established. At the conceptual level, the growing areas were located in voivodships that have a tradition of growing oilseed and do not have access to a close processing market outlet (northwest and northeast). The extraction plant could be located at one of the growing areas, or it could be located at a port using a warehouse or storage facilities offered by the GOP as part of a joint venture effort.

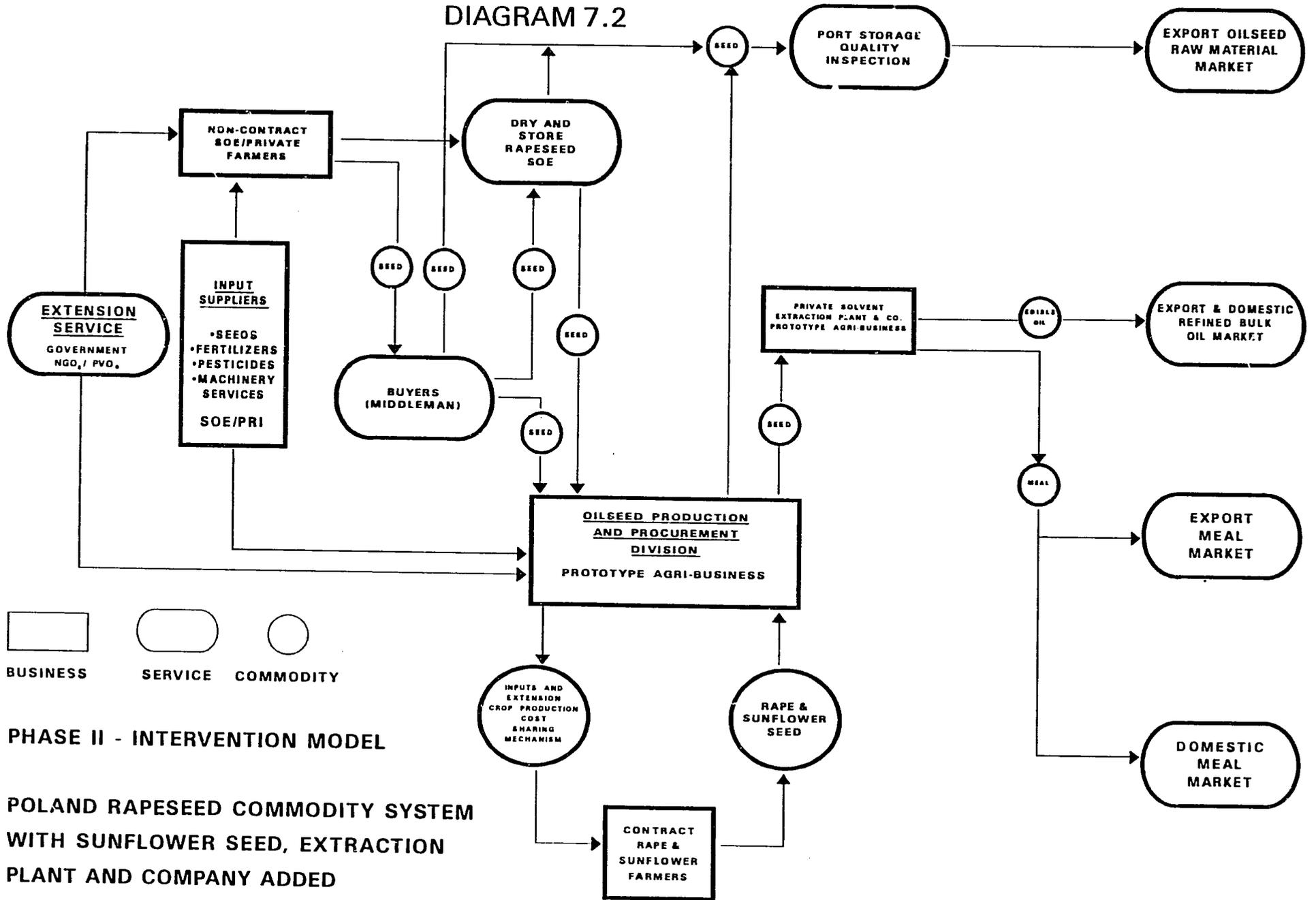
## **CONSUMER PRODUCTS**

The branded and packed products are phased in after the extraction plant is operating profitably, and the test marketing of the custom packed branded products has been successfully completed (see Diagram 7.3). The objective is to always test market custom packed products before attempting to penetrate the market.

## **COMPOUND FEED DIVISION AND MEAT-PROCESSING DIVISION**

Phase IV introduces a compound feed division and a meat processing and packaging division that are similar to the branded and custom-packed products (see Diagram 7.4). The market has been tested by the products produced under contract at the custom packed compound feed meal company and custom packed meat processing and packaging company. The Phase IV compound feed division will supply the satellite growers of livestock and poultry with feed meal to supply the Phase IV meat processing and packaging division.

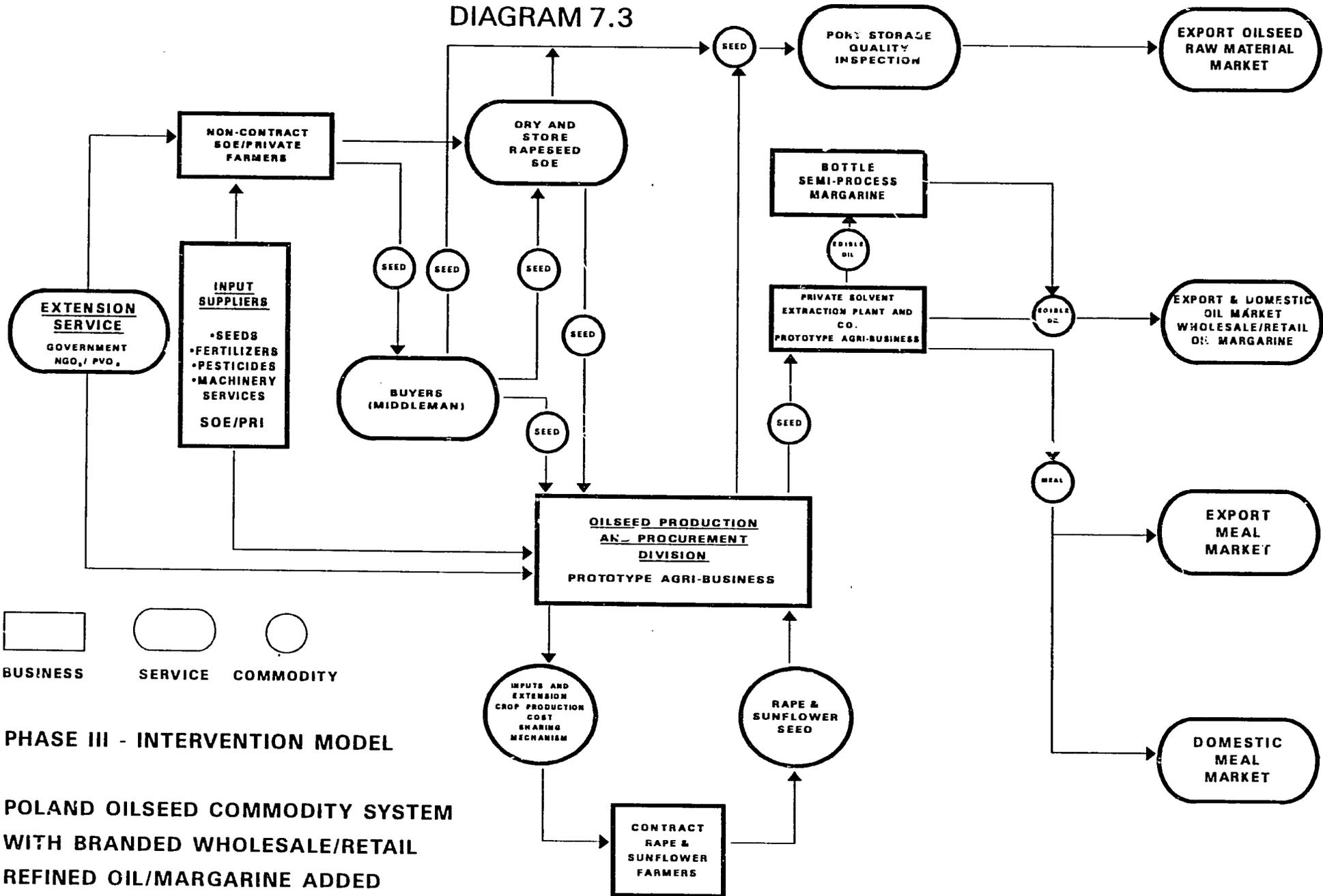
DIAGRAM 7.2



PHASE II - INTERVENTION MODEL

POLAND RAPESEED COMMODITY SYSTEM WITH SUNFLOWER SEED, EXTRACTION PLANT AND COMPANY ADDED

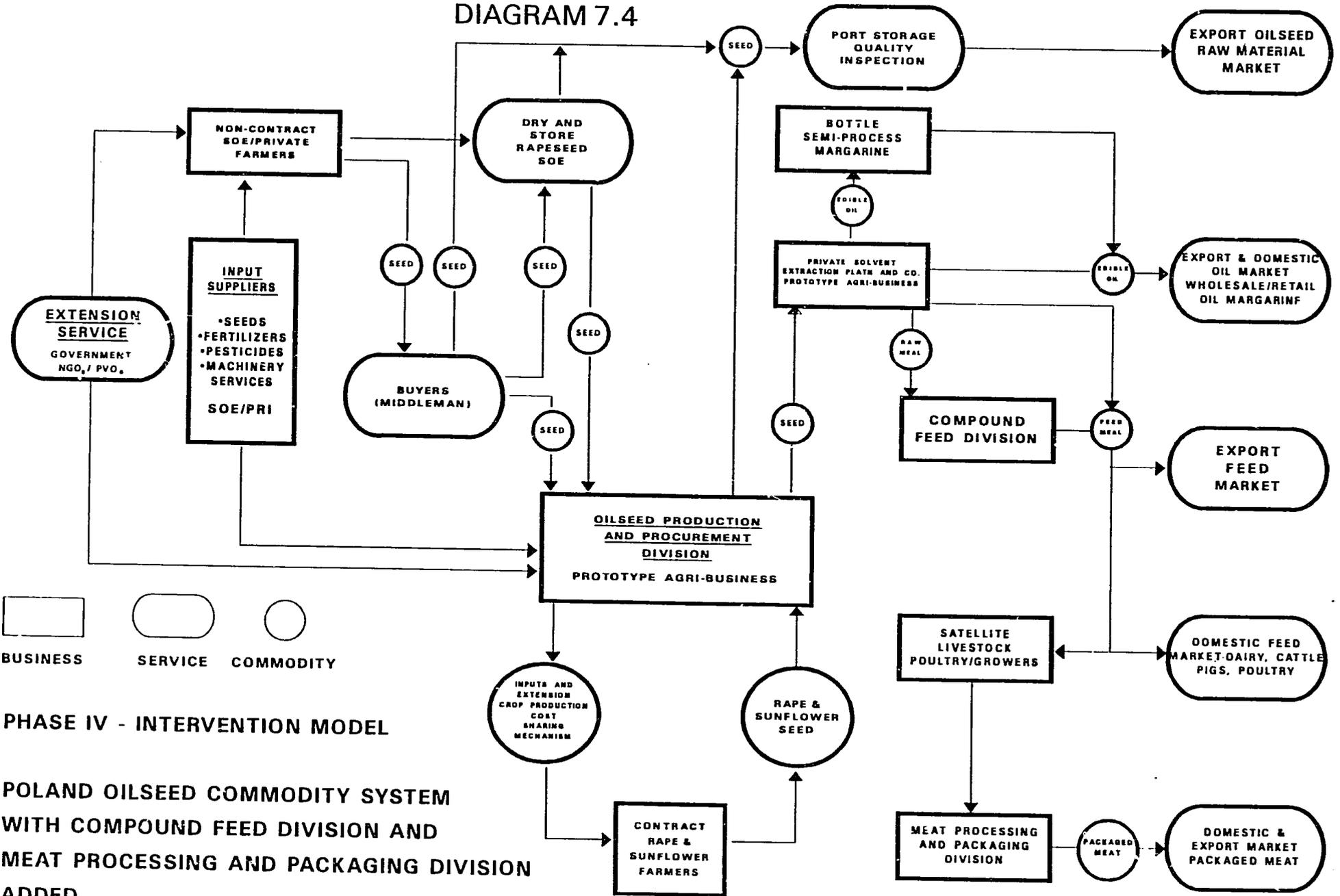
DIAGRAM 7.3



PHASE III - INTERVENTION MODEL

POLAND OILSEED COMMODITY SYSTEM  
WITH BRANDED WHOLESALE/RETAIL  
REFINED OIL/MARGARINE ADDED

DIAGRAM 7.4



PHASE IV - INTERVENTION MODEL

POLAND OILSEED COMMODITY SYSTEM WITH COMPOUND FEED DIVISION AND MEAT PROCESSING AND PACKAGING DIVISION ADDED

The compound feed division and the meat processing division are horizontally integrated into the vertically integrated business. The satellite growing of livestock and poultry is vertically integrated into the meat-processing division.

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Small and Medium Enterprise Development:  
A National Assessment of the  
Agroindustry Sector of Poland

Volume Two: Annexes

by

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January 1993

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Krajowy Związek Producentów Nasion Ogrodniczych i Materiałów Szkółkarskich

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inż. Adam Gorajski

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Zbożowo-Młynarskiego "PZZ" (SOE)

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Tarnobrzeg

## PGR - STATE FARM

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**Andrzej Kitliński** - manager

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- Temporary Administrator of the Horticulture Farm

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**Andrzej Aumiller**

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President Scientific/Technical Association of Horticulture Engineers and Technicians

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Rusztyn Lucjan

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**ANNEX B**

**Scope of Work  
for an**

**AGROINDUSTRY SUBSECTOR ASSESSMENT  
OF SMALL BUSINESS CONSTRAINTS  
AND OPPORTUNITIES**

**GEMINI/POLAND SMALL BUSINESS PROJECT**  
Development Alternatives, Inc.  
August 1992

**GEMINI/POLAND SMALL BUSINESS PROJECT  
SHORT-TERM CONSULTANCY  
SCOPE OF WORK**

**for an  
Agroindustry Subsector Assessment  
of Small Business Constraints and Opportunities**

1. Background

1.1 The GEMINI component of the Government of Poland (GOP) and USAID Poland Small Business Program assists the GOP to accomplish its small business advocacy objectives. Part of the work of GEMINI/Poland is to assist the MIT to identify and target specific industries whose restructuring and growth offer increased potential for small business development.

1.2 GEMINI's industry-specific research focuses on the scope of small business activity within and access to targeted industry markets and the operational linkages of small business to larger enterprises and private businesses to state-owned and cooperative enterprises. The purpose of this research is to identify the policy, regulatory and financing constraints and opportunities affecting profitable small business development in the industries analyzed. The results of GEMINI industry analyses are used to formulate policy recommendations, small business assistance strategies and government/private sector action programs to support small business expansion in Poland.

1.3 Agribusiness accounts for one-third of Polish industrial output. In the past three years, the switch to a market economy has had an enormous impact on every facet of the agricultural economy, particularly on input supply and farm output processing agribusinesses. Local farms and agribusinesses must compete with imported inputs and processed food products, mainly from the Western European farms and agribusinesses. Economic, legislative, regulatory and financing issues span the spectrum from unclear property and ownership rights and privatization of state-owned enterprises (SOEs) to demand for preferential credits and unequal tax subsidies. Lack of a clear private sector industrial policy, especially one which addresses the agribusiness sector, is accentuated by major financing issues, such as ineffectual credit policies, high interest rates and poor banking services.

2. Assessment Rationale

2.2 The current state of Polish agribusiness is grave. The farming sector is dependent agribusiness for input supplies which have rapidly increased in price. Price increases in agricultural inputs (i.e. fertilizer), and deterioration and excess of farm equipment not employed, coupled with low farm productivity and product-led perceptions of the agricultural sector market are some of the reasons behind high farm-gate prices.

2.3 Many of the new small agribusinesses formed in 1990 ceased operation by the end of 1991. Among the reasons for the small business failures are the lack of credit, rising input costs, inefficient processing machinery, loss of traditional markets, imperfect market

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information and access and bureaucratic constraints on leaving/privatizing SOE farms, coops and agribusinesses. The growth of this industry is also currently impeded by the declining farm output, partially due to the drought, lack of market linkages and agricultural policies and issues arising from the privatization of SOEs, land use and ownership uncertainties associated with cooperatives. Significant legal, regulatory and financial systems reform must be addressed. Equally important, regulatory and policy reform is not being implemented in a cohesive manner based on agribusiness systems and linkages to farmers and market. These limitations reduce the positive impact of the agroindustry subsector on economic growth.

- 2.4 Despite the problems, the potential for small business growth in agroindustries is considerable. New market development efficiently produced, cost competitive agricultural products and by-products is a major priority. Domestic and export marketing constraints must be analyzed and potential identified solutions must be tested.
- 2.5 In the past 3 years, Poland has been flooded by imported food products, nearly 50% of total imports originating in the EEC. Pent up consumer demand for foreign goods combined with superior marketing and sales forces in the Western firms results in a loss of the market share for Polish producers. However, because of the economic recession and declining incomes, Polish agribusiness have the potential to compete more effectively both in domestic and foreign markets. Attention must be focused on markets rather than products. Solutions to some of these complex issues will be found in examining linkages between private, state owned enterprises and cooperatives and in assessing potential markets. Recommendations on specific policies, legislation and regulatory reforms can be drawn from the conclusions of this analysis.
- 2.6 All areas of privatization are proceeding at a much slower pace than anticipated. Privatization was seen as the key to the transformation of Poland's command economy to a market economy; this was an overestimation of the privatization process. Presently, SOE's and particularly SOE farms, are being (re)privatized at a rate ( ); this is x% of all SOE's being privatized. Also, leasing of SOE farms, processing plants and distribution companies is being undertaken by the ----- agency.
- 2.7 Export market constraints are numerous given intense international competition. As an associate member of the European Community, Poland is only allowed to export raw or semi-processed goods in tightly controlled quantities. Poland's traditional markets with the former COMECON countries fell apart with the dissolution of COMECON. The state apart uses in charge of marketing and distributing state-processed goods abroad have become dysfunctional in all these countries; new, private businesses are not Polish. Other Central European countries have discontinued previous trade due to lack of hard currency and reduced disposable income in the Commonwealth of Independent States.
- 2.8 Within this framework of structural adjustment and economic recession, the transformation of the agroindustry subsector from state-owned enterprises to private sector companies -- many of them small and medium sized ventures -- will continue. Such businesses are often better positioned to respond rapidly to changing and more competitive market demand conditions affecting this industry. Thus the challenge to government in the near and medium term is how to create, implement and sustain a policy favorable to private sector SME agribusiness to open new market channels, increase farm and

agribusiness production, stimulate new investment, maximize rural employment and the efficient use of agricultural sector resources.

- 2.9 To provide a basis for such policy formation, the government requires industry specific data and information which clearly identifies policy and financing constraints and problem solving strategies and opportunities to effectively foster the growth of SME agribusiness. This Scope and Work is designed to accomplish this objective, and provide the government with a cohesive range of findings, conclusions and recommendations on policy options and strategies to be pursued.

3. Objectives of the Agroindustry Subsector Assessment

- 3.1 Assess the current status and near and medium term market potential for increased small business participation in agroindustry based, in part, on linkages to privatized SOE and the lease of SOE agribusiness and farming assets.

- 3.2 Determine the extent to which the current regulatory, policy, privatization and financial systems environment impedes or fosters small business investment formation and the viability of small business operations in the agroindustry.

- 3.3 Based on the results of analysis, prepare a report which details the opportunities for policy and financial system reform and strategies to be pursued by government to strengthen and expand agribusiness markets and private sector investment in the growth of the SME agribusiness sector.

4. Focus of Analysis

- 4.1 For purposes of this assessment, an agroindustry focus on specific commodity systems and agricultural areas will be employed. Commodities to be analyzed may include oilseeds, fresh and processed fruit and vegetables and select livestock products.

- 4.2 Small business participation in and access to the agroindustry markets will be assessed through structured interviews and empirical analysis of data and information provided by:

- a) SME agribusiness farm output processing, marketing and distribution companies, as well as relatively integrated mixed farming and processing SOEs in the process of being privatized;
- b) private, public and cooperative sector input suppliers;
- c) Government of Poland (GOP) Ministries (e.g., Agriculture, Privatization and Finance), technical assistance and donor organizations concerned with agroindustry projects, training, privatization and financing.

- 4.3 Agribusiness financing constraints and opportunities will specifically be assessed within the scope of the field research and analysis carried out.

- 4.4 Legal and regulatory issues, bureaucratic practices and privatization programs affecting SME agribusiness operations in the industry will be assessed within the context of the current civil, commercial, agricultural and taxation laws and regulations of Poland.

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5. Assessment Methodology

5.1 Empirical Research:

Assisted by GEMINI project staff in Poland, the consultant will prepare questionnaires to guide and focus field interviews with those participating in the agroindustry subsector assessment. The questionnaires will be designed to provide the empirical data and information required to:

- a) define and describe the structure of the industry, emphasizing the role and functions of SME agribusiness;
- b) estimate the near and medium term demand trends in the agroindustry market, and the strengths and limitations of small business participation in that market;
- c) delineate the vertical and horizontal linkages and competition between formal and informal small businesses and other firms in the industry;
- d) assess the financing and taxation constraints impeding SME agribusiness profitability and growth, and determine the opportunities to increase private sector investment incentives and access to credit; and
- e) analyze the legal, regulatory and bureaucratic constraints affecting agroindustry and SME agribusiness to determine the opportunities for policy reform and investment promotion to support the viable growth of and increased private sector participation in the agroindustry sector.

5.2 Comparative Analysis:

The results of field research will be compared to more macro data and information assembled by GEMINI/Poland staff from secondary sources (agroindustry, agribusiness, infrastructure, privatization, agricultural policy and economic reports on Poland) to maximize the value of the findings and conclusions derived from this assessment.

5.3 Special Issues:

From a policy perspective, the impact of developing markets and distribution outlets for agribusiness products is a major objective in this assessment. Simultaneously, financing for SMEs, access to foreign donor supported financing and agricultural sector privatization programs will be carefully considered. The extent to which state owned and quasi-privatized enterprises, other government entities (local, provincial and national) and donor assistance affects SME agribusiness access to the agroindustry markets will be specifically delineated and analyzed.

6. Term of Assignment, Reporting Requirements and Logistic Support

- 6.1 The consultancy period shall be 210 person days in Poland, commencing in early to mid-August 1992.
- 6.2 The Team Leader selected to carry out this assessment will provide the GEMINI/Poland director with a work plan within five working days of his/her arrival in Poland.

- 6.3 A draft outline of the proposed assessment report contents and the results of research to date shall be presented to the GEMINI/Poland director within 35 working days of the commencement of the assignment. Research constraints and issues arising will be discussed and corrective action taken at that time.
- 6.4. Extensive data information on the agroindustries and the laws and regulations of Poland affecting the industry and small business will be provided to the consultant by GEMINI/Poland. Office facilities, local professional and field research logistics support staff will also be provided by GEMINI/Poland. Development Alternatives, Inc. shall provide consultants lap top computers to use during the assignment.
- 6.5 Participants in the field research to be carried out have been contacted/and or targeted by GEMINI/Poland. These include agribusiness, cooperatives, private sector agroindustry groups and associations, financing institutions, GOP entities and representatives of donor organizations and donor sponsored technical assistance projects concerned with the agricultural sector.
- 6.6 A complete draft assessment report will be presented to the GEMINI/Poland director prior to the consultant's departure form Poland. The report shall include the names, addresses and telephone numbers of all persons interviewed, with recommendations on who among them should be asked to participate as members of a GEMINI Agroindustry Working Group. This Working Group would be organized to advise the MIT on policy issues and assistance needs of the small business sector involved in the industry.

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**ANNEX D**

**THE ADVISORY SERVICE SECTOR**

**THE ADVISORY SERVICE SECTOR****CONTENTS**

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## PART ONE

### SMALL BUSINESS ADVISORY CENTER CASE STUDY

#### INTRODUCTION

The rapidly changing structure of the Polish economic system is placing the small farmers of the Tarnobrzeg District, where the average farm size is only about 11 acres comprising as many as 10 separate small plots, in a critical situation.

- The bankruptcy and closing down of many of the state farms and other state-owned enterprises has resulted in the loss of many outside jobs that 40 percent of the private farmers of the district were forced to hold down to supplement their farm income.
- Marketing channels for both farm inputs and outputs have been severely disrupted resulting in rapidly rising input costs and decreasing prices for farm products putting a severe "squeeze" on net farm revenues.
- The added difficulty of a severe drought throughout most of Poland in the summer of 1992 has further diminished already-reduced crop yields resulting from less than optimal use of fertilizers and other farm inputs.

As enough has been written about the current crisis in the Polish economy in general, and the agricultural sector in particular, the situation will not be reviewed in detail here. For a general review of the agricultural situation in the district and a more detailed examination of three major agricultural subsectors, the reader is referred to *Agriculture and Food Production*, Tarnobrzeg District, Poland, July 1991, published by Technoserve, Inc., 49 Day Street, Norwalk, Connecticut 06854 USA.

The Enterprise Promotion and Support Center (EPSC) was established by Technoserve as a Polish nonprofit foundation on the invitation of Senator Zbigniew Romaszewski of the Tarnobrzeg District in July 1991. Establishment of the program followed a preliminary assessment of the agribusiness sector of the district by a Technoserve team in 1990. The program operates in an environment of rapid economic and political change and resulting uncertainties as to the specifics of government programs and regulations that affect the operations and viability of agribusiness ventures.

The first act of the newly established EPSC was to carry out a more detailed review of agricultural activities in the Tarnobrzeg District with assistance from consultants associated with the Church of Jesus Christ of Latter Day Saints. The purpose of this study (cited above) was to evaluate the needs and resources of targeted agribusiness subsectors (dairy, livestock, and horticulture) and establish a database for future use.

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## PROGRAM DESIGN AND START-UP

The goal of the Technoserve program in Poland is to "generate new sources of rural employment — as well as viable, sustainable sources of income — for the economically distressed farm families of Poland." This goal is to be accomplished by establishing, developing, and turning over to Polish management, a nonprofit Polish foundation, the Enterprise Promotion and Support Center. The EPSC is to operate in such a way as to become financially self-sustaining on the basis of fees generated and income from direct commercial activities. It is also to become a model for replication in other regions of Poland and perhaps in other countries.

The EPSC consists of two components: a Business Analysis and Advisory Services Unit (BAAS), and a Farm Service Company (FSC). The BAAS will provide short-term business analysis, advisory services and training to local enterprises, on a subsidized fee basis, to identify market opportunities and learn the skills necessary to capitalize on those opportunities and to establish viable rural enterprises. The FSC will operate as a "for-profit" company to provide assisted enterprises and others with technical services such as tractor repairs, agricultural input supplies, warehousing and market brokering. The BAAS was fully operational at the time of this review. The FSC, though not yet fully functional, was preparing to initiate a commercial accounting service and reviewing several other "for-profit" service activities.

The operational objective of the EPSC by the end of year three (mid-1994) is to provide long and short-term enterprise development support and technical services on a fee basis to 150 to 200 rural farmers and entrepreneurs and 8 to 12 major enterprises each year. By that point, both components of the EPSC are to be fully operational and generating 25-30 percent of local program costs. Management is to be in local hands and a replicable program model of the promotion and support of rural enterprise development is to have been field-tested and proven.

The program is supported by a three-year, USD 1,171,000 Cooperative Grant from the U.S. Agency for International Development (USAID). This grant was to be coupled with a grant from the Polish Government (GOP) of USD 98,000 and other Technoserve-generated funds of USD 292,000. As this review was being carried out it became clear that the GOP was going to have difficulty in providing the support it had previously indicated would be made available. A follow-up request for this funding is currently being prepared for submission to the Sejm (national legislative body) through the office of Senator Romaszewski.

The initial staff team of the EPSC was to include two expatriate Technoserve advisors in the positions of Director and Agribusiness Development Specialist. These two were to be complemented in the first year by six local specialists in the three agribusiness subsectors targeted as the focus of enterprise development activities: fruit and vegetable production and processing, dairy production and processing, and meat production and processing. The full staff complement was recruited and fielded on a timely basis as the project was starting up in mid-1991, and a Peace Corps Volunteer accountant and small business management advisor was added in early 1992.

In April 1992 it became necessary for the EPSC director to return to the United States for health reasons and the agribusiness advisor was assigned to the position of director. The second position has remained vacant with the original agribusiness advisor serving both functions. Technoserve has seen this as an opportunity to accelerate the identification and placement of a Polish deputy director in the program. Without having spent a great deal of time assessing the strengths and weaknesses of individual staff members, the technical competence and motivation of the team members appeared to be extremely

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high. However, the staff needs to be augmented by one additional expatriate with experience in program management, feasibility analysis, and finance.

An extensive program of training for all local staff members was carried out by a combination of EPSC managers and Technoserve personnel from other countries. The training covered Technoserve administrative systems as well as the preparation and analysis of feasibility studies, market analysis, financial analysis, environmental impact analysis, English as a second language, computer use, personnel management, and other topics.

The initial design also called for the establishment of a local Advisory Board to eventually serve as the Board of Directors of the EPSC once Technoserve assistance is completed. Seven prominent local individuals from the private sector, government, and the local Catholic Church have agreed to serve on this Advisory Board and they have also begun receiving orientation and training from the EPSC team.

### **SUBPROJECT IDENTIFICATION AND CURRENT ACTIVITIES**

The EPSC team has taken a variety of approaches to making itself and the availability of its services known throughout the Tarnobrzeg District. It has met with district officials, installed a large sign over its offices, placed advertisements and articles in local newspapers, and met with farmer groups (men and women) throughout the district. The result of these efforts has been an escalating number of inquiries and requests for assistance. At least 103 contacts with small-scale farmers, farmer groups, private entrepreneurs, state farms, and other state-owned enterprises have been logged to date.

While the majority of these contacts have been for informational purposes only ("Can you lend me some money?"), they all tend to spread information about the Center throughout the District and help to develop a more accurate understanding of the types of assistance the Center is prepared to offer and the terms under which it is offered. The following specific activities have resulted from this group of contacts:

- Five feasibility studies have been completed and turned over to sponsors. These studies have been for enterprises in four subsectors. In addition, a "pro forma" feasibility study has been prepared for the establishment of a modern milk-processing operation to produce high quality milk products. This enterprise will be developed when an appropriate sponsor group of small farmers is identified.
- Three feasibility studies are currently in the process of being completed in conformance with contracts between the Center and sponsors and sponsor groups.
- Longer-term service agreements either have been or are currently being negotiated with three enterprises.

Four basic criteria are used to determine the eligibility of an enterprise to receive BAAS assistance: It must be agriculture-related. It must be located in Tarnobrzeg District. It must be organized and registered as a private business. The project sponsor or sponsor group must have, or be able to obtain, the management skills required to run a project of the type proposed. In determining the priority of projects for assistance EPSC also considers the number and type of project beneficiaries, the amount of training that will be required and the availability of equity likely to be required to develop the project. These decisions are made by the professional staff in their regular meetings.

The program is now at a turning point. It is moving from a time of organization, orientation, training, and promotion to a period of more intensive implementation of a limited set of activities. At the time of this review a decision was made to focus the lion's share of staff effort over the next six months on the implementation (commercialization) of just five activities.

Under the nonprofit BAAS arm, two groups of state farm employees are being assisted to plan to take over the farms on which they have previously been employed. These mixed farms at Czyzow and Wolka cover 1,425 and 740 acres and involve 43 and 22 worker/owners, respectively. Both feasibility studies and restructuring plans are in the latter stages of preparation and long-term assistance contracts are being prepared with the worker-owned companies that have been formed to take over these farms. These should serve as models of how a small business advisory center can assist local worker groups and the government in the state farm privatization process.

A third high priority enterprise under the BAAS program is the provision of assistance to an entrepreneur wishing to establish a small meat processing operation in Pysznica. A feasibility study completed earlier can be adapted to this purpose. The sponsor has raised and spent more than USD 200,000 of his own and his family's money over the past 10 years to acquire land and construct approximately 2/3 of the facilities required for the operation, but has now run out of funds and is unable to complete the project. This should be a fairly quick implementation process if additional loan capital can be generated. Seven workers would be employed in the processing of 10 pigs and 2 cows per day.

The for-profit FSC arm of the EPSC will be initiated by the launching of a commercial bookkeeping and accounting service in January 1993. This service will focus on the establishment of Western-style accounting systems now required by the government and banks, the establishment of appropriate accounting systems for new enterprises, the computerization of manual accounting systems, the preparation of income tax returns, training of accounting and bookkeeping personnel, and other related services. As preparation for this start-up, one EPSC staff member (an agricultural economist) is being trained in Western-style business and accounting practices by the Peace Corps Volunteer assigned to the project. Computerized Polish accounting programs are being reviewed; Polish laws concerning taxation, accounting, banking, business reporting, and so forth are being collected and studied; a model service contract is being developed by a local lawyer; and the identification of potential clients has begun. Privatization of previously state-owned enterprises, changes in tax law (and the institution of a first-ever personal income tax), as well as the required conversion of all accounting systems to a Western (EEC) model, all indicate a substantial demand for these services once the program is launched.

A second for-profit activity planned to be implemented in November and December 1992 is the brokering of Lupin bean exports to Italy. In this case, the FSC will serve as a broker, taking an option to sell a fixed quantity of beans (probably 25 tons) to an Italian buyer, and offering small farmers who plant these beans as an intercrop with potatoes an option to sell their beans at an attractive fixed price if sufficient commitments can be generated to fill the entire order. The export shipment would be made against an irrevocable letter of credit from the buyer and farmers would be paid within 30 days of shipment. Any margin from the deal (potentially as much as USD 5,000) would be retained as initial capital for the FSC though a portion of it might be paid to the farmers as a demonstration of the benefit of this type of activity. The intention will be to form a bean producers' group to play a more active role in this trade in future years. There are, of course, numerous risks in this type of deal, which partially account for the farmers' initial reluctance to form a group to do the trade this year. For now, they have adopted a "wait and see" position but will be more than happy to sell their crop if the price is right.

Other subprojects that might be elevated to the top priority list if any of the above fail to materialize include a state farm privatization in Ruda (BAAS) and a tomato-packaging operation (FSC).

The EPSC has developed a number of important local institutional relationships that at once enhance its ability to work productively in the district and enable it to provide assistance to other agencies with similar or complementary aims. A good day-to-day working relationship with the deputy provincial officer (*vice wojewoda*) in charge of agriculture has proven useful to both parties as mutual references and information flow freely between the two offices. Similarly, the EPSC staff works closely with the farm extension service in the district (ODR, part of the Ministry of Agriculture) providing training in areas of need. A good working relationship with the Bank for Food Economy has resulted in the referral of projects to the EPSC as well as willingness on the part of the bank to consider projects recommended by the EPSC. The ongoing contact with the office of Senator Zbigniew Romaszewski, whose initiative it was to establish the program, continues to play a critical role in linking the program as necessary to national level policy. The EPSC also stays in contact with the regional office of the Agricultural Property Agency (AWR), the USAID-sponsored GEMINI project and, informally, with other small business development centers.

One institutional linkage of particular note is the working relationship that has developed between the EPSC and the Pulawy Soil Institute that is trying to develop a small business advisory center of its own. The EPSC is collaborating closely with them in planning this venture and is providing training as requested to help their staff develop necessary business development skills.

### PROGRAM IMPACT TO DATE

After only 15 months since the establishment of the program it is too early to determine the quantitative impact of a program of this nature. There are, however, a number of accomplishments that may be cited. In LogFrame terminology, most of these are more at the output (or activity) level than at the purpose (or objective) level.

- Six hundred small-scale strawberry farmers at Kazimierz effectively took control of their cooperative, appointing their own management and revitalizing a failing operation. This took place after just five meetings with EPSC staff covering topics such as marketing, production, business planning, finance, cooperative management, and others. The EPSC has no further regular contact with this cooperative because none is required. The cooperative operated successfully in 1992 although strawberry yields were seriously reduced by drought.
- Eight Polish professionals have been trained to implement the Technoserve methodology in the analysis and planning of business activities.
- Seven local leaders have been recruited to serve on the Advisory Board and have begun receiving training on the Technoserve program. They were responsible for organizing and registering the EPSC as a non-profit entity under Polish law.
- A major sector study of agribusiness activities and potential in the region has been carried out and published, greatly adding to the existing knowledge base regarding agriculture in the district and identifying high priority subsectors for program interventions.
- Four state farms have been assisted to develop long-range plans to achieve profitability in their operations. These plans include full financial projections and the preparation of financial packages. Employee groups were assisted to form private companies to lease the land from the state agency and plans for the 1993 crop season are being developed.

- A cooperative owned and operated primarily by women was assisted to complete a financial analysis of its candy and soft drink manufacturing enterprise. The business was found to be potentially profitable and a new manager was hired to implement the business plan.
- Two private businesses were analyzed and strategic plans and financial projections were prepared for the owners. One of these (a meat packing operation) is likely to approach CARESBAC for financing. The other used the analysis to decide against making any additional investment in the business.
- Three pro-forma feasibility studies of apple packing, meat processing, and milk processing were completed and are being used by clients who request assistance in these activities.
- The EPSC has been active in collaborating with other projects and institutions:
  - Three advisors from the Pulawy Soil Institute received a month of in-house training at the EPSC that led to a request for more extensive assistance in establishing a similar operation in Pulawy.
  - EPSC advisors work with the local ODR on training and technical assistance activities.
  - EPSC staff have assisted GEMINI consultants with their investigations of conditions in the agricultural sector.
  - A team of women from the EPSC staff has been formed to assist township women's clubs to identify and develop income-generating activities.
  - A VOCA volunteer doing an analysis of the apple packing business financed by the Polish-American Enterprise Fund used the EPSC office as his base during his stay in the area and was given support and assistance by the EPSC staff.

In general, the program is making good progress toward the achievement of its projected output targets. In some areas they are operating somewhat ahead of schedule while in others, most notably subproject implementation, progress is lagging. The next few months should see a significant impact at this level, however, if the intended focus is maintained on working intensively with a limited number of enterprises.

### **PROGRAM STRENGTHS**

The Technoserve/EPSC program offers several strengths as a model for other small business advisory centers in Poland or other East European countries. First, and perhaps most important, is that it takes a focused and pragmatic approach to the accomplishment of program objectives — the development of small businesses. It is implementing a variation of a development model that has been successfully applied in a number of other countries and is still flexible to the peculiar situation of Poland and the rural enterprise development opportunities that are found here.

A second major plus, and the one that enables it to make a relatively quick start and project the rapid achievement of program objectives, is the good capability of its Polish staff who came to the

program with solid backgrounds in their various academic disciplines, though lacking in entrepreneurial experience and a thorough understanding of "market" economics.

The linking of non-profit and for-profit activities also appears to be a strength for the EPSC program, providing the opportunity to act in a commercial way to provide necessary goods and services to subprojects and others, as well as to demonstrate the "commercial" way of doing things in a distinctly "non-commercial" environment. There appears to be little or no resistance to this approach and the for-profit activities offer at least the hope of eventually providing financial support for the non-profit side of the operation.

The program was initiated on the request of a senior level local politician and is fully consistent with the objectives and priorities of the Polish and U.S. governments. The EPSC works closely with officials at the provincial level and with those representatives of the central government who are responsible for the privatization effort in the district. These officials are a key source of subproject referrals to the EPSC and are largely responsible for the current subproject portfolio.

It is a significant strength that the program is focused on just one province and seeks to gain a comprehensive understanding of, and make a significant impact on that province, rather than providing a narrower range of assistance over a wider area. In this way, it is fully complementary with the USAID-sponsored GEMINI project that is assisting government at the center to make policy and regulatory adjustments that will facilitate the private enterprise development process. It is, in a sense, a field laboratory from which the GEMINI advisors can learn and links them to real field level activities.

### **PROGRAM WEAKNESSES AND CONSTRAINTS**

There are also inevitable forces that retard the development of the program. First is the very tight budget with which the program must operate. Additional budget resources would enable Technoserve to bring in at least one more program management and finance specialist and to provide the type of high-level and specialized short-term assistance required to do a sound job of assisting the complex enterprises with which the EPSC finds itself dealing. Although local staff appear to be competent in their areas of technical specialization, there seems to be in Poland a general lack of understanding of the "commercialization" process. This is natural in a situation where for two generations there was no such process.

The EPSC is also working in a very erratic policy environment with the central government trying to develop a body of law that will support the private sector but is proceeding in "fits and starts" that fail to send a clear message to its people and make business planning very difficult. For example, recently proposed changes in the tax code will have a major effect on the viability of business enterprises — an effect that cannot yet be detailed and built into the business-planning process. Similarly, uncertainties regarding the land privatization process make it difficult in most cases for private farmers to obtain a long-term lease on land they wish to take over from the state. Claims of prior owners of the land must be adjudicated before land can be leased or purchased. This leaves the new lessors or potential owners with no collateral for use in securing much needed long term investment credit, and, often, with little assurance that their tenancy will extend beyond its initial three-year term.

There are also certain policies, largely in the labor management area, that tend to greatly increase the real cost of labor over the nominal base rate and make it difficult to carry out the staff reductions that are often necessary to turn around a failing enterprise. These policies (long vacations and liberal sick

and maternity leave, completely paid medical care, guaranteed employment, and so forth) have been built into the system to the extent that the workers now expect them as their right whether or not they are economically sustainable.

The LPSC also faces an array of what we may call "non-entrepreneurial attitudes" on the part of nearly everyone it deals with. The lack of "commercialization" experience on the part of staff discussed above is one manifestation. Another is that small farmers are slow to accept the fact that if their situation is going to improve, it is only they themselves who will do the improving. They support the work of the EPSC but are generally happy to sit back and wait to see what is created for them rather than to become partners with the center in the creation of a new enterprise and invest their own funds.

The current recession in the Polish economy, that is at least partially a result of the restructuring process, also creates operating hurdles for the program. Small farmers are indeed short of investment capital as a result of declining operating margins and are adopting a very conservative stance toward what they perceive as risky new investments in an uncertain environment. Commercial banks are struggling under the load of a mountain of accumulating bad debts from the failed and failing state enterprise system. Interest rates are high, generally over 50 percent, which makes long-term borrowing generally unattractive even if inflation is also high and the currency is steadily devaluing.

Perhaps the most serious threat to the program is the shortage of time within which program goals must be accomplished, or more importantly within which the Polish people must begin to see more tangible benefits of the new political and economic system in which they live. There is a real sense of urgency about the accomplishment of important objectives. This sense of urgency exists alongside a high level of optimism that a few successful demonstration cases will have a rapid "snowball" effect and that, once under way, change will take place at a rapidly increasing rate.

## **PART TWO**

### **SMALL BUSINESS ADVISORY CENTERS — FUTURE FOCUS**

#### **INTRODUCTION**

The investigation that was carried out as part of the case study presented in Part One of this annex, together with other research carried out as part of the Agroindustry Sector Assessment, brought to light at least five important issues to consider in the design and operation of small business advisory centers (SBACs) in Poland. The same factors are likely to apply in varying degrees in other Eastern European countries undergoing political and economic transformations similar to that which Poland is experiencing. The bias that underlies this discussion is that the objective of establishing these centers is to maximize their contribution to the small private sector business development process, and therefore contribute to the commercialization of the overall economy. The purpose is to make the most effective use possible of local human and natural resources, with a minimum of long-term public financial support requirements — whether from domestic or international sources.

#### **FINANCIAL SELF-SUSTAINABILITY**

The type and scale of enterprises being assisted by the EPSC in Tarnobrzeg Province and the potential for it to undertake commercial activities on a for-profit basis on its own behalf indicate a rather strong likelihood of attaining a substantial level of self-sustainability within a three-to-five-year period. There appears to be no conflict under current Polish law of the foreign-sponsored SBACs being registered as non-profit Polish foundations, undertaking for-profit activities to support their development programs. It appears that the effect of the current law permits this type of activity, but that the SBAC may not be completely free of tax obligations. Much work remains to be done in the area of foundation law.

SBACs can earn revenues by several means. First, they can charge fees for short- or long-term services provided to client enterprises. Such fees may be adjusted to recognize the differing priorities and ability to pay of various clients. For example, a group of small-scale women farmers might be charged a very low (subsidized) fee for the same type of management advice or service for which a more prosperous business would be required to pay a full "commercial" rate. An SBAC might also generate revenue by playing a direct commercial role in local agribusiness activities. For example, it might serve as a broker for export deals in order to test and demonstrate the viability of such trading and train local farmer groups or entrepreneurs to play the role. Under certain circumstances, an SBAC may decide to become a direct importer and distributor of certain farm inputs not otherwise available. This type of role should be approached with caution, however, as it might not be productive for an SBAC to put itself in the position (or the perceived position) of competing with the agribusiness community it was established to assist.

There may be cases where it would be useful for an SBAC to become a direct investor in local agribusiness enterprises and thus eventually generate a positive cash flow in the form of profit distributions or loan repayments. This is an approach many would choose to take though there are at least three major problems that tend to dim its luster. The first is that in an economy like Poland's,

where most agribusiness enterprises are likely to require hundreds of thousands of dollars in capital, a very substantial fund would be required to make a program of direct investments worth the effort. A second problem is that when the amount of funding available is more limited, there is a tendency to use small allocations of the available capital to "jump start" enterprises while they wait for the larger capital that is "sure to be approved any day." Such "jump start" investments are frequently lost. A third reason to hesitate using this approach is that the mixing of technical assistance and capital assistance activities can frequently serve to pervert the functioning of both.

An alternative way to invest in selected client enterprises is to take at least a portion (perhaps the "profit" portion) of any fees for long-term services in the form of shares or as a royalty on the gross revenues of the enterprise. This has the result (as long as the enterprises are successful) of generating long-term revenues for the SBACs without draining cash out of the client enterprises during start-up. It also creates a partnership bond between the SBAC and the enterprise that can be a very positive factor as the enterprise is developing. This concept has been tested in a limited way in Tarnobrzeg Province and found no initial resistance from private project sponsors. It is important that the SBACs be as cautious in the selection of these investments as they would if they were considering cash investments.

The lack of collateral with which to secure new business loans is a serious factor inhibiting the availability of "bankable" projects to potential investing institutions. Two generations of an economic system that discouraged the accumulation of personal and private business assets has had the effect of seriously limiting the availability of valuable collateral. The possibility of the SBACs having access to their own permanent investment guarantee fund is one that might be investigated more fully. It might be better, however, if the fund were located in an outside institution with its own controls but accessible to the centers. Guarantees could be used to support international letters of credit for the purchase of imported goods, for securing working capital lines of credit or for providing security for longer-term investment lending. In all cases, benefiting enterprises should be charged an interest rate to compensate the fund for the costs of administration and potential losses.

### **SERVICES OFFERED**

The kinds of services a small business advisory center might offer may be included under three separate headings: short-term services, long-term services, and commercial services. There is a certain amount of overlap among the three but we will find a reasonably comfortable home for any activity we wish to consider within this framework. Financial services might be considered as a separate category but, for the reasons mentioned above, it is not suggested that they be included among the activities of a typical business advisory center.

Under the first category of services, short-term services, a large number of activities might be included. The factor they have in common is time — they all are provided within a specific time frame. They have a beginning and an end and a pre-agreed set of activities that will take place in exchange for a set fee.

Any of the following services might be provided on a short-term basis:

- Feasibility analysis, business planning;
- Market surveys and analysis;
- Privatization planning;
- Technology selection;

- Training;
- Accounting system computerization; and
- Technical trouble shooting.

These services and others, provided to a wide range of developing enterprises, provide the SBACs with exposure to a wide range of subsectors. They provide the assisted enterprises with highly focused services directed toward their specific requirements at the time and, to the extent that fees are charged, provide a source of revenue to the SBACs.

Long-term assistance activities would usually take the form of either general management assistance or more narrowly defined assistance in the areas of accounting, production management, marketing, or others. This type of assistance would normally put the SBAC in "partnership" with the client and fees may be based on a cash monthly retainer plus either a percentage of turnover or shares in the company. The period over which such assistance might be offered could range from perhaps one year to indefinitely. Longer-term assistance should be based on fees at least high enough to cover the cost of assistance and provide a profit, once the enterprise has reached a state of financial viability, to recover initial subsidies and support start-up assistance to other ventures.

The list of activities that might be undertaken under the general heading of "commercial" services is as broad as the imagination of the people in the SBAC and should be directly responsive to the local situation. For example, the EPSC in Tarnobrzeg Province is developing a commercial accounting service in response to a need that has been generated by a basic change in accounting requirements by banks and government, and a shortage of Poles trained to implement the new Western systems. By offering the service on a commercial basis to basically any client, the center will be at once providing a needed service, generating financial support for other elements of its programs and preparing Polish accountants to implement the new system.

Another good example from the EPSC is the Lupin bean export brokering activity that is to take place in the next several weeks. The center will play a direct role by obtaining an overseas purchase contract for beans to be purchased from local farmers. Again, not only should the EPSC generate a surplus from the activity, but a new marketing pattern will be developed and tested to be taken over by Polish brokers or farmers associations whenever they are ready. In this case, if the EPSC/SBAC is to be a more or less permanent institution, it might play a useful long-term role as a facilitator of produce brokerage activities on behalf of farmers who are too small and have too little access and knowledge of international markets to participate in them successfully on their own.

Other ideas for commercial services include the importation and distribution of agricultural inputs, fruit packing and processing, and milk processing. I believe it is important for the SBACs to choose their activities carefully to ensure, first, that they are viable in their own right, and that they will facilitate rather than compete with the real or potential activities of their target population. Opportunities abound in Poland at the present time. The nature of those opportunities is likely to change very rapidly as the economy adjusts to the "new" economic realities. It is the task of the SBACs to remain ahead of those changes to identify and evaluate "cutting edge" enterprises that will lead to further developments, and to avoid the easy trap of responding to last year's economic situation.

## MANAGEMENT AND STAFFING

There are several issues to consider when planning the management and staffing of a small business advisory center: the make-up of the management and technical teams, the mix of expatriate and local professionals on both teams, the use of Peace Corps or other volunteers, and the turnover of management responsibility to local staff members. These are complex issues that will have a major effect on the development of the program. It is tempting to suggest a "standard staffing package" for such SBACs but, in fact, staffing must be considered in line with local agribusiness opportunities, the priorities of the sponsoring agency and available financial support.

The situation in Southeastern Poland suggests a minimum professional staff of six, including two expatriates (specialists in program management, marketing, finance and business planning) and at least four local professionals with specific technical and management/planning skills. It is wise initially to place responsibility for program management with the foreign team members as their Polish colleagues gain experience and understanding of the commercialization process. It is particularly important that expatriate assistance be focused on developing linkages between local and foreign markets, financial analysis, and planning and the techniques and rigor of professional business planning services.

It is the relative weakness of this commercial sense that apparently hinders the development of small private ventures and the privatization process. The technical capability of Polish professionals is not questioned and there are certainly good examples of Poles with strong entrepreneurial instincts and ability. These people tend to be fully engaged in their own businesses, however, and are not generally available for full time employment by a business advisory center. The weakness in this area is a result of two generations of teaching that the role of the individual is subordinate to that of the state. There is every indication that this sense will develop quickly and that, with the guidance and assistance of experienced expatriates, it will not be long before local staff professionals are able to take over full program development responsibility. There should not be a rush to "nationalize" the program, however. It is more important to focus on developing a sound program basis and gaining the maximum benefit possible from the synergism of combining Polish and foreign experiences.

The various volunteer organizations working with the private sector development process in Poland can serve as a valuable source of technically qualified and/or low-cost expertise for small business advisory centers. These organizations include the U.S. Peace Corps, VOCA, Citizens for Democracy, International Executive Service Corps and others. In many cases, these volunteers are mid-career professionals with the type of skills most needed in Poland at this time. It is very important that these volunteers be recruited and placed in the same manner as other professionals. It may be tempting to accept "cheap help" and then consider how to use it. This may have a negative effect if the volunteers are less able than their local colleagues or if they are assigned to activities outside of their area of expertise.

## PROJECT PRIORITIES

There are three different types of enterprises that might be the focus of small business advisory centers. They include private entrepreneur-driven enterprises, rural cooperatives, and state-owned enterprises and state farms. There are aspects of each that suggest their inclusion in the portfolio of SBAC activities.

The greatest range of opportunity and potential for rapid development is with the small privately held companies that provide commercial links between producers and consumers by processing or marketing farm inputs, services or products. Many of these enterprises will help to rationalize new commercial patterns as the former state-dominated supply and marketing organizations are increasingly unable to play their role. Others will contribute to the crucial task of strengthening commercial links between Polish agriculture and international markets.

Most of these enterprises will be new ventures that require assistance in planning, financing, and developing, or turning around their business. There are abundant and diverse opportunities to develop small-scale private business in the agribusiness sector. Such enterprises are certainly affected by the current uncertainties of policy and regulation as the Polish government struggles to come to grips with its transition to market economics. These effects are fewer in this area than in the state-owned sector and new enterprises at least avoid the problems of accumulated old debt, negative work patterns, outdated capital equipment, and other problems that hang like an ominous cloud over the privatization process.

A second priority might be placed on seeking out opportunities to assist formerly state-controlled agricultural cooperatives. There are cases, such as the one cited earlier in Tarnobrzeg, where a limited amount of assistance to a cooperative can affect the incomes of several hundred farmers as the cooperatives adjust to the new economic patterns. Again, the near-term impact of such assistance will be diminished to the extent that such cooperatives are weighed down by old debt, outdated technologies, and unproductive management and work practices.

There are also useful functions that SBACs can play in the privatization of state-owned enterprises and state farms. The EPSC is involved with several worker groups who are seeking to lease state farm land and equipment from the Agricultural Property Agency, that has taken control of such assets from their "founding bodies" in other areas of the government. The SBACs should be very cautious in devoting their limited business development resources to this very difficult process. Two specific types of short-term assistance are valuable to these new worker-owned companies: analysis of the farming resources available and preparation of a detailed business plan based on agricultural and market realities, and facilitation of the legal privatization (land transfer) process.

In many cases the state farms in the southeastern part of Poland (ranging from about 500-1,500 acres) are operated as mixed farms, seeking to reduce risk by undertaking a variety of cropping and livestock activities on a limited scale. The lack of cost-center accounting frequently makes it impossible even to determine with confidence which activities are profitable and which are not. Strong and capable business planning assistance should be directed toward a gradual specialization and integration of agricultural activities on these farms, basing development on successful trial efforts and developments in the larger market.

It is also reasonable and useful for the SBACs to become expert local advocates for worker companies in the privatization process. Developing a centralized experience in preparing the forms, analyses, and applications required by the AWR, and assisting the companies to prepare restructuring plans prior to privatizing can be an important service, both to the companies and to the agency that is charged with the difficult task of transferring these assets to the private sector.

There are several reasons that SBACs not become too involved in the long-term development of state-farm privatization projects. First is that most of these farms involve a limited number of worker-owners, thus limiting the direct impact of even a successful development process. Next is that in most cases it appears that the worker-owner companies will not be making a serious financial commitment to the business and that their sources of available development capital will be limited — especially when they

are only leasing the assets and they are thus not usable as loan collateral. What these workers are really doing is making a modest investment to protect their jobs. Old and unproductive management and work patterns are unlikely to change in this context. A third reason is that the entire privatization process remains somewhat unclear in operational terms. While those in charge are able to lay out a fairly clear set of rules and priorities for the privatization of state farm land, the application of the rules remains unclear. Some on the state farms doubt that the worker companies will actually be given the opportunity to lease the farms as they wish to do. Even if they are able to gain control of the farms they still face problems of working capital shortages, inappropriate capital equipment and production technologies, and a marketing system that has largely broken down.

### COMMERCIAL, TECHNICAL AND POLICY LINKAGES

All economic activity is the result of various types of transactions. These transactions "link" the various participants into networks in which the participants are mutually supportive. That is, in one way or another, each participant in a given network is providing something of value to one or more other participants and is receiving something from one or more other participants. Any transaction linkage network should be a "win, win, win" situation. All parties are winners even if "winning" may sometimes mean minimizing some negative result.

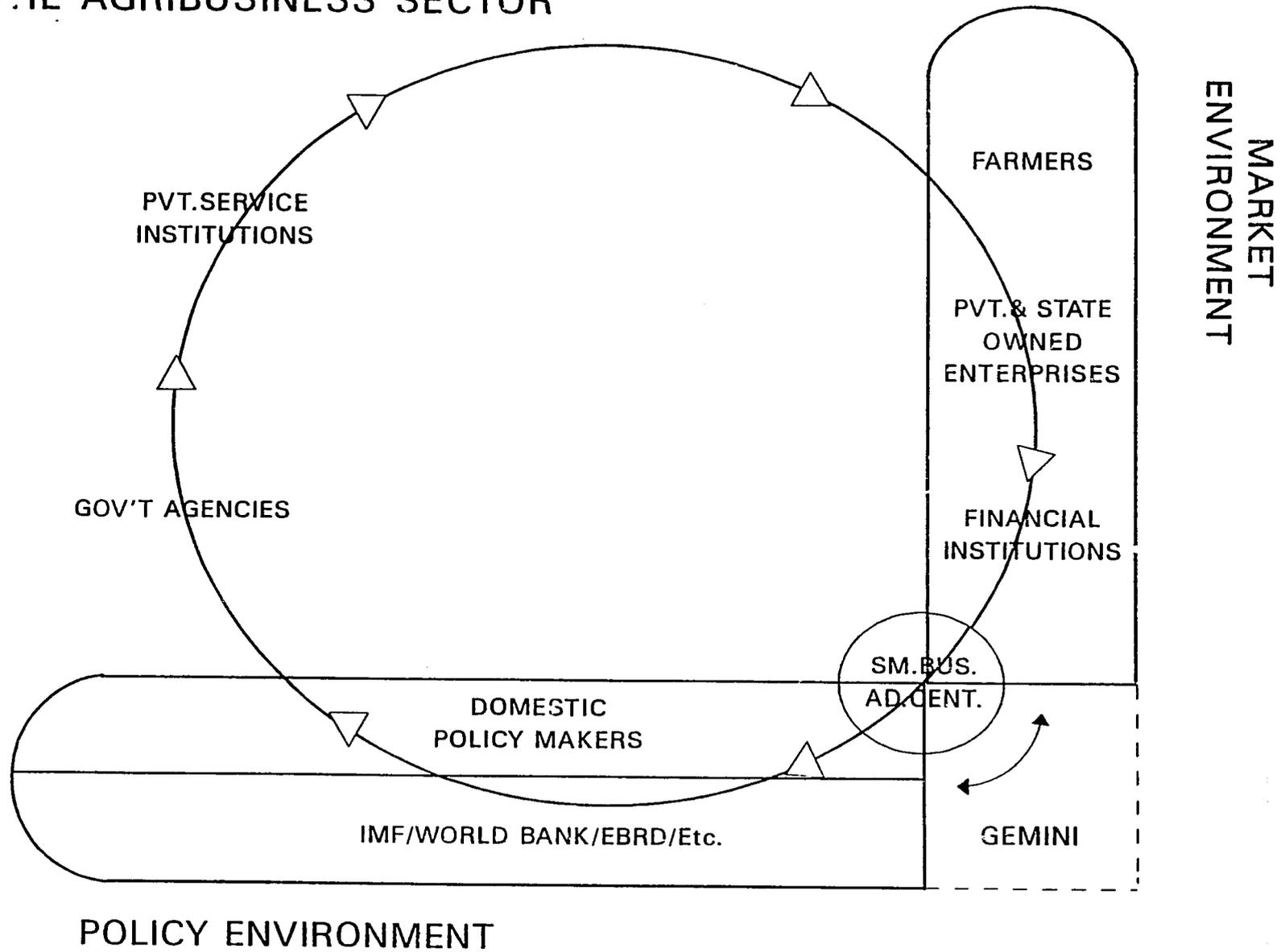
There are five basic types of participants in the networks we are concerned with here: farmers (producers, those at the beginning of the agriculture production process), enterprises (private, state-owned, cooperative), financial institutions, service institutions (including small business advisory centers, universities, government research stations, and so forth), and policy makers (with GEMINI serving as one linking mechanism between the private sector and policy makers).

Among these five generalized participants, we may identify at least three distinctly different categories of linkages: commercial, technical, and policy. The several linkages that might be grouped together as "commercial" would include transactions between farmers (or enterprises), between farmers and enterprises (inputs/marketing), and between farmers (or enterprises) and financial institutions. Technical links exist between farmers (or enterprises) and various service institutions. These links may be commercial where services are provided on a fee basis. Their primary function, however, is to transfer information. Policy links need to be strengthened among all of the above participants and the policy makers at the local (*gmina*), provincial (voivodship) and national levels. There appears to be a fair amount of interaction between private sector participants and policy makers at the local and provincial levels, and one would assume that agencies at this level provide an indirect link with national level policy makers. In fact, however, it is doubtful that this link is very effective. A function of the GEMINI project is to facilitate this linkage.

Diagram 1 is a simplified representation of the operation of the economic system that is the result of these linkage networks. As the economic system "spins," it moves through and is influenced by the market environment and the policy environment. At present there appears to be little or no "overlap" (or at least effective overlap) between the market environment and the policy environment, thus, the many breakdowns in the economic system as the difficult shift is made from a command economy (dominated by the policy environment) to a market economy (dominated by the market environment). The GEMINI project is an attempt to create such an overlap, at least with regard to the promotion of small agribusiness enterprises. SBACs are another more local and direct mechanism for developing the linkage between the market and policy environments to support private enterprise development by actually participating in the commercial process.

# ECONOMIC DYNAMICS OF THE AGRIBUSINESS SECTOR

## DIAGRAM 1



## POLICY ISSUES

There are two general areas of policy that are important in forming a small enterprise advisory center. The first is to make a clear distinction between supporting private enterprise development and supporting the privatization process. These two concepts are not mutually exclusive, but they are also not coincident in terms of their meaning, purpose, or the kinds of activity one might use to promote them. Private enterprise promotion is aimed at the development of entrepreneurial skills, the enhancement of production and management capability, and the creation of work and income opportunities through investment, market development and the application of production technology. It is thus primarily an economic process.

Privatization, however, is primarily a political process aimed at transferring industrial and agricultural assets from public control to private control. While privatization is usually seen as part of an enterprise promotion activity, it is likely to correspond more closely with investment promotion, as domestic or foreign investors come forward to purchase the assets of companies being privatized. Efforts to take over state-owned companies or farms by employee groups often fail the test of "enterprise development," because, in many cases, no significant investment is being made by the employees and no new productive capacity is being generated. They are trying rather to protect their jobs while the government is trying to carry out its privatization policy without sacrificing production. These are understandable and important in their own right, but not necessarily useful in terms of an enterprise development effort. There are still some important roles for SBACs to play in the privatization process (discussed earlier) but it would be a mistake to tie up their long-term resources in this area.

Small business advisory centers should keep in mind four key factors as they design their programs, and target areas on which to focus their enterprise development assistance:

- **Investment Promotion** — Enterprise development is based on private investment. This not only provides for the procurement and activation of productive assets, but it also ensures the serious financial interest of the promoter in view of the risk involved. Investment may be provided by a single entrepreneur, a small group of partners who will be actively engaged in the enterprise, or a larger group of investors who also benefit from the operations of the enterprise as suppliers, customers, or workers.
- **Market Development** — It is critical that a new (or existing) enterprise has a very clear notion of the market it is addressing, and a workable plan for either developing or finding a profitable niche in that market. To say that because many apples are sold, we can sell apples too, does not constitute an adequate marketing plan. Small business advisory centers must make a special effort to develop the skills of their staff members and clients in the analysis of markets, at all levels, and the preparation of marketing strategies and plans.
- **Clear Objectives** — Each new SBAC should make a clear statement of its geographical area of interest, study that area thoroughly, and target specific agribusiness subsectors for proactive attention. The SBAC may remain open to consider whatever type of agribusiness activity might be proposed, but it will benefit from targeting two or three specific areas in which to develop clear expertise.
- **Demonstration** — Subprojects (clients) should be selected carefully for their likelihood of success; the benefits they will generate to their owners, workers, and the local economy; and their value as demonstrations to other local investors and others of the potential benefits of

undertaking and supporting private business development. The Poles in many cases lack a strong sense of how to commercialize a production activity — largely as a result of two generations in a command economy. Their technical capabilities are, however, generally high. Their sophistication and desire are such that the impact of a good demonstration project is likely to be significant as they gain an understanding of the process, and their understandably high level of risk aversion at present begins to abate.

The other policy issue to present here is the importance of using the small business advisory centers to support local initiatives. Centers should be directed to an area not larger than a voivodship (province), and each should at once develop strong working relationships with other economic players in the area and work to strengthen such relationships with players from outside the targeted region — especially banks and other financial and technical institutions.

SBACs should work especially closely with the provincial (voivodship) and township (*gmina*) administration that are frequently responsible for state-owned enterprises and farms and that play a major role in the privatization process; regional privatization offices; local private sector organizations (which they also might help form); financial institutions; and other advisory centers. By becoming a focal point for local private sector development efforts, SBACs can make a valuable contribution to the process on a practical level, while also serving as a conduit for feedback to the policy level of the central government, which is needed to continue the policy rationalization process currently under way.

## **PART THREE**

### **AGRIBUSINESS-RELATED ADVISORY SERVICES**

#### **ADVISORY SERVICES AND THEIR FINANCING**

Once the free market economy started to appear in 1989, there was a very dynamic development of advisory institutions, organizations, and commercial companies that have had a significant impact on tens of thousands of new entrepreneurs. The complicated legal and organizational status of the organizations provides a reason for classifying these initiatives based on their source of financing.

Classification of advisory services based on source of financing are:

- Advisory services financed from the state budget;
- Private consulting companies;
- Advisory services of companies that purchase crops and provide inputs;
- Advisory services financed with foreign resources; and
- Advisory services of self-government and other self-financing organizations.

#### **ADVISORY SERVICES FINANCED BY THE STATE BUDGET**

The advisory services financed from the state budget include a broad variety of consulting. These include social advisory services, technological consulting, advisory services for different age groups from young to retired people, advice concerning the management of households, and advice on ecological issues and economic problems.

Within the agribusiness sector, the leader in advisory services is the Regional Extension Centers (ODRs). The activities of other budgetary entities are also focused in the ODRs.

To better illustrate the scope of problems and responsibilities the ODRs are burdened with, focus will first be placed on other budget institutions that have no direct influence on financial success, but whose activities have a direct impact on business operations.

#### **Quarantine and Plant Protection Stations**

According to its name, this unit deals with issues related to the protection of the domestic market from an influx of goods that do not conform to health standards (contamination with diseases and pests), and it issues certificates on health standards for exported Polish goods. These certificates are a necessary part of documentation required when crossing the borders. The import-export certificates are issued at the cost of the trading company. All money earned by the stations has to be sent to the central budget.

These stations also review the outbreaks of diseases and pests for the purpose of issuing warnings when there is a need to protect domestic plants. Proper functioning of these entities is an important economic element against the danger of contamination with new diseases and pests.

### **Chemical-Agricultural Stations**

The primary task of these stations is the analysis of soil and plants for their content of minerals, and basic research commissioned by government institutions regarding a complex analysis of soil classification in the country, and testing for possible contamination of soil as the result of the work of agriculture and industry, including contamination with radioactive elements.

Soil analyses for agrarian producers are performed for a fee that is based on the number of tests and number of elements analyzed. The financial resources acquired in this way may be used for the development of the station.

### **Seed Inspection Centers**

These entities are financed in whole by the state budget. Their main task is the control of fields on which seed material reproduction and plant nurseries are located. Their actions require the work of highly qualified specialists, both in the knowledge of plants and agrotechnology, as well as in all diseases, pests and weeds, which concern agrotechnology and quarantine issues.

The centers issue certificates to guarantee that the seed material is of the highest quality to ensure high crop yields often over the course of several years. Growers who wish to sell their seeds or plants as breeding material must be registered with the local center, and their crops are subject to specifications established by the center.

### **State Inspection Centers**

This entity is a control body, supervised by the Ministry of Agriculture. Its main duty is the quality monitoring of agrarian goods and processed products. All inspections are performed according to schedule, as well as at the commission of government administration. Additionally, the SIPPAP has the right to arbitrarily evaluate goods when the quality is questioned by the consignee. The controls are performed directly at the producer's or at the consignee's office if there is a question about the quality of goods received. In the centrally managed economy this was an agency supporting the controls of the prosecutors, or the Supreme Control Chamber of Tax Offices.

The introduction of market economy rules limited the activities of the SIPPAP. Market competition forced the improvement of quality of many goods and caused the producers to care about their clients. In the current situation, SIPPAP uses its existing structure for the collection and processing of market information.

So far, an effective system of data transfer to central bodies has been established — mostly into the Agricultural Market Agency. At the same time the system for its dissemination among other institutions, companies or individuals is defective. In the current situation the data is published in some agrarian magazines, and the most important information is also published in some newspapers, not necessarily agriculture related. The SIPPAP is definitely the strongest element of market information

consulting. However, its use is limited because of a weak transfer of information from the central unit in Warsaw to regional offices. The long delays make the information practically useless from the standpoint of market decisions and business needs. The SIPPAP is wholly financed from the state budget. Incomes generated from penalties are sent to the state budget.

### **Agricultural Academies and Scientific Institutes**

The advisory services of agricultural academies are targeted mostly toward cooperation with implementation and advisory entities. Use of the experience and knowledge of the academics is possible by inviting them to participate in training seminars organized by local units. Translation of scientific experience into practical business terms is very difficult. The programs run by the scientists are rarely tied to concrete business projects.

All activities of scientific institutes are financed from the state budget. Part of the resources are transferred to the institutes in monthly installments to finance day-to-day activities and the basic scope of research and training, which are the outcome of the statute and specific features of the institute. These institutes can also receive significant resources through grants. To receive this money, the institute has to inform the Scientific Research Committee of research work, with appropriate reasons for its justification. A special committee reviews the application and decides whether to allocate all or some of the funds requested. It may also reject the application. Grants are generally given for periods no longer than three years.

This system of financing, similar for all research institutes, is detrimental for entities that are involved in projects requiring a longer time horizon to conclude research. This specifically involves genetics and plant breeding, when the time necessary for the implementation of the basic assumptions — breeding a plant or seed type with specific features — often requires more than 10 years. An example of this lack of consistency is the cancellation of sunflower research in the Plant Breeding Institute in Poznan. According to the person responsible for this research, work on creating a sunflower variety adapted to Polish conditions is 70 percent complete. The successful breeding of a sunflower variety with a 130-day vegetation period, or an appropriate hybrid, seems to be a strategic goal from the standpoint of the state. About four years are needed to complete the project, and the USD 50 thousand required is minimal.

Another issue is the financing of the same tasks from the same resources for different entities. One example is the financing of the Plant Breeding Stations from the Biological Progress Fund of the Ministry of Agriculture, when all other work in the same field is financed by the Scientific Research Committee.

The above examples prove the need to establish a new approach to some areas of science. Scientists and breeders have voiced the need to establish the basic directions of research and plan their appropriate financing. It is most costly to the country when work is canceled and results are not implemented.

In the case of academics doing consulting outside the college or institute in the form of training, seminars, or advisory services, the rule is to pay separately for these types of activities, including the coverage of all additional costs. Because this is a source of extra income, scientists are interested in such activities but the institutes have not encouraged this. The scientists are under-utilized in this respect. The result is reliance on primarily state financing and lack of practical applications for business, as well as limited resources available for institutions such as the ODRs for remunerating outside personnel when

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other expertise is required. The unattractive salaries caused the outflow of young people from scientific institutes. They moved into purely commercial institutions and companies, as well as state administration at the central level.

### **Agricultural Vocational High Schools**

The use of advisory services of these schools is similar to the system described for the scientific entities. An additional element are short-term seminars for business people, together with case studies for the participants, on a fee basis.

These schools are financed wholly from the state budget, through the Ministry of Agriculture and Food Economy. The current budget law allows for management of additional economic activity — in the form of a school foundation or farm. Under the new economic conditions, the use of advisory services can bring additional profits for the schools and their personnel. Quite often these entities are increasing this type of activity.

### **Regional Extension Centers (ODRs)**

The Extension Centers in their current form have worked since January 1990. They are budgetary entities of the *voivods* financed in whole from the state budget. Aside from the funds for their statutory activity transferred through the voivodship offices, they receive money for special projects from the Ministry of Agriculture, which is supervising their activity. Because of the ODR's large amount of technical resources, they are engaged in economic activities such as supplementary farms or foundations. Without these additional activities they would have to send all their revenues to the central budget. These additional resources cannot be used for salary increases, but only for operations, purchase of equipment, or investments. The employees may receive remuneration for additional work such as a special project.

The central institution for agricultural education and advisory services is the Center of Advisory Services and Education in Agriculture in Brwinow, with branches in Cracow and Poznan. The founding body for the Center is the Ministry of Agriculture. The Center manages organizational and training activities for the ODRs.

The tasks most often implemented by the ODRs include:

- Advisory services in the areas of:
  - effective production technologies in farming;
  - management of a farm;
  - legal regulations regarding farms;
  - home economics;
  - social and living conditions of families in rural areas, i.e. retirement planning for farmers, social organizations for the elderly.
- Implementation of the results of scientific research into agricultural practices.
- Collection and dissemination of technical, technological, economic, and market information.
- Raising the professional qualifications of farmers.

- Defining the needs of farmers towards science.
- Preparing analyses of the situation in agriculture.

The scope of activities that can be performed by the ODRs is proof of the leading role this institution has in advisory services. The leading centers in Poland have good contacts with all organizations in the field of science, information, and consulting, as well as with central and regional state administration and local governments. The technical potential often conforms to the highest international standards. This is especially true for teaching equipment and publishing and computer systems. Such high standards can be found only in about seven of the 49 centers. The others lag far behind in all aspects.

The well-trained and experienced personnel, together with the technical capacities, allow the centers to undertake all projects. Other budget units have robbed the ODRs of much of its staff.

As a result of recent organizational changes, the social council of agricultural consulting was created for ODRs. The councils are composed mostly of individual farmers and representatives of farmers' trade unions. This is an advisory and evaluation body for the management of the ODR. The council has the possibility of influencing the directions of services and adapting the advisory policy to the current needs of the local farmers' communities. There are some positive examples of the cooperation of the councils with the management, such as in the Modliszewice ODR (Kielce region). But there are also many disputes that practically eliminate the possibility of performing statutory tasks, as in ODR Minikowo (Bydgoszcz region). The general problem is that many councils cannot distinguish between "social" and "political" issues. Their membership is more involved in political issues than in advisory services. This system, tested and proven in many countries, does not always work in Poland.

## **OTHER SERVICES FINANCED BY THE STATE BUDGET**

### **Central Standardization Institute**

The basic task of the CSI is quality control for exported and imported agricultural products, fresh or processed. This unit is directly subordinate to the Ministry of Foreign Cooperation, which also develops the list of products that must come under the control of this unit.

Until 1989 the activity of CSI was focused on two state enterprises — Rolimpex and Animex. In the current situation when any company can be involved in foreign trade, the role of CSI is more difficult. The amounts and variety of goods have been increased many times. New goods not yet listed by the MoFC appeared on the market, and they certainly qualify for inspection. The certificate issued by CSI is a condition for crossing the border. The methodology of evaluation and quality norms conform to international standards. Incomes coming from payments for services much exceed the costs of operations. All revenues are returned to the state budget.

### **Polish Committee for the Normalization of Measures and Quality**

This unit played a significant role in the centralized economy, when the definition of quality standards was a measure for conforming with export requirements. With lack of market competition, there was an attempt to replace the appropriate market mechanisms with administrative regulations. In

the new situation, introduction of quality standards for particular products is meant to protect the consumers or the environment.

In the latest period, the work of the Committee is focused on adapting Polish standards to their international counterparts. The Committee establishes the basic standards and the so-called borderline values for the content of particular ingredients or other substances that may occur in food products as a result of growing or processing. Until recently, most Polish products were given quality insignias. Recently, companies are not interested in obtaining such certificates. The Committee is financed wholly from the state budget.

### **SANEPID - Hygiene and Epidemic Control Stations**

These entities are subordinate to the Ministry of Health, and work based on legal norms for food products and sanitary conditions in trade. This primarily concerns the sanitary conditions for wholesalers and retail stores selling food products. The control focuses on the storage of products, location of products in the store in relation to each other, their date of consumption, state of health, and periodical check-ups of the personnel, and so forth.

Similar controls are performed in all food processing companies. All local SANEPID offices have their own laboratories. Based on the controls, inspectors of the SANEPID can stop sale of inappropriate products, forbid the personnel to work, or even close the store. They can also impose penalties on store personnel and management.

### **WIS - Veterinary Sanitary Inspection**

This entity is subject to the Ministry of Agriculture. Its rights are similar to SANEPID, but they concern the conditions of trade, slaughter, and processing of meat.

## **SUMMARY OF CONSTRAINTS**

The institutions described above can be independently involved in individual advisory for farmers. In reality, only a few of them have contacts with farmers or producers. Undoubtedly, every one of these institutions has an important, direct or indirect, role in agribusiness, processing, or trade. Most of them are involved in quality control issues, and their activities are similar to police actions. The information, which is important for business, is mostly not used. This is because of a lack of proper preparation of the information and the unfavorable attitude toward these institutions by their potential users. The huge technical and organizational effort is wasted. The issues regarding quality and market problems are not communicated in a proper manner.

The data collected, and only partly processed, from the above institutions should be collected by an independent professional team (scientific personnel) and processed from the standpoint of potential market usage, regardless of its earlier use for inspection purposes.

Another problem is the use of work performed by WSKiOR (voivodship stations of quarantine and plant protection), IN (Grain Inspection) and SChR (Agriculture-Chemical Stations). According to

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their statutes, all efforts are directed toward providing farmers with appropriate data and promotional information leading to optimum use of production inputs.

The information coming from the WSKiOR should allow farmers to undertake appropriate plant protection actions, based both on the timing and the chemical used. So far, none of these centers is involved in economic analyses related to this. This entity should also be informed about the companies that distribute the chemicals and supervise issues related to their Polish certificates and validity periods of products.

When the free market economy appeared, so did many trading companies, and a methodology to regulate these firms was not prepared. An example of the problem is the experience of an orchardist from Sandomierz, who complained about the lack of effectiveness of many chemicals he used. This was mostly because many of the chemicals were well beyond their expiration date. The issue is important both for economics of production and for environmental protection.

The Seed Inspection Station is in charge of quality control of seeds. There is little information provided directly to farmers or entrepreneurs. The control is administrative, and there is no interest in economic or business aspects. The results of control are not published and the information is used little by scientific or plant breeding institutes. Farmers are unable to take advantage of research performed on different seed varieties that might provide higher yields and heartier crops.

The Agriculture-Chemical Stations focus on work commissioned by government agencies, and services for farmers are a small portion of their activity. According to the available information, less than 5 percent of farmers are using chemical analysis of their soil as the basis for optimum fertilizing. Some explanation for this is permanent use of organic fertilizers, which farmers mistakenly believe makes this analysis unnecessary. The equipment of the stations is sufficient for all basic analyses, including microelements. Many stations have equipment for precise markings on a mass scale, in the form of atomic absorption or gas chromatography.

All of the entities described above do not mean the success or failure of an agricultural project. The appropriate usage of the wide variety of their work should be the basis for the creation of an optimum business relation, profitable to all its linkages. A system of full availability of information and services offered should be created for all interested in investing in a profit-making agribusiness. This concerns farmers, processing companies, and traders of food products.

The only entity that is by statute obliged to work with farmers and agrarian entrepreneurs are the ODRs. The best of them make efforts to coordinate the results of the work of all budgetary entities, mostly using those that have technological importance. Too many institutions combined with too many disparities in the published results of research make it impossible to follow important information. An additional element that limits their activity is the financial resources, which are systemically dwindling.

Recently there has been a switch from technological to economic advisory services. In all ODRs new teams were created that specialize in economic, financial, and marketing analyses for the existing and newly established businesses. This concerns mostly the processing sector. However, it seems that there is a misunderstanding of the role of small rural enterprises.

Many small-scale economic activities are being undertaken in areas where only large-scale processing activities will guarantee success of the enterprise, and this is very disturbing. One example is the fruit and vegetable processing company in Złota and the winery in Busko-Zdroj. They are able to earn revenue because of minimal competition and a total lack of effectiveness of state enterprises that

are in a similar industry. The limited possibility for investing, as well as lack of resources for marketing, make the future of these companies very dubious. In both cases the ODR is involved as advisor. In each of these companies the advisors are trying to find a way out of the situations created by their owners, who made decisions without professional analysis at the moment the investment process was begun.

An additional problem that occurs in all ODRs is the inability of the advisors to evaluate the entire project, which is necessary to ensure successful implementation. The technical resources and knowledge of the advisors are sufficient to perform a financial analysis and sometimes a technological evaluation. They have large problems with marketing evaluations and development of a long-term marketing strategy.

People come to the ODRs expecting the advisors to solve their business problems without additional expenses. Business people are often unwilling to listen to the advice of the ODR advisors. The businessman, when he does not risk his own resources, even when the advisory services are professional and appropriate, quite often is skeptical of the advice and does not use the ideas. On the other hand, the advisor very rarely compiles the results of his efforts in a study that could be a document for the future work of the company. His activity is more like a neighbor's advice and has little in common with a business study.

The GOP must consider redirecting the use of the significant advisory and financial potential that the budgetary entities have in respect to development of private enterprise in the country. To achieve this, their statutes and scope of activities must be more narrowly defined.

Additionally, many aspects of their activities should be considered in the context of the other organizations that are involved in pro-business activities.

### **RECOMMENDATIONS FOR RESTRUCTURING SERVICES**

Most of the described entities that target part or all of their activities toward advisory services do not service the entire business chain. Most services are targeted toward cooperation with farmers or small processing companies. However, if as in the case with scientific institutes, services are also provided to large processing plants, these are mostly in the form of technology. Even if some sector institutes prepare economic studies for large enterprises, the studies do not assume a vertically integrated approach, with a view to creating favorable business conditions among all of the participants.

This situation causes the need to create such structures that will be able to perform the necessary studies and analyses, as well as effective business plans for single agricultural products or for vertically integrated systems.

Many of the budgetary entities are involved simultaneously in administration, regulation, and advisory services. It is impossible for one institution to manage all these activities at once. There are examples that indicate that some of the entities limit their activity to administration, giving up the advisory services, or even of potential clients who do not wish to use the advisory services of institutions that will eventually be regulating the business that received assistance. This primarily concerns WSKiOR, Grain Inspection, and SIPPAP because they are regulatory bodies.

With entities that provide social-type advisory services for households, or even regarding the environment, these activities have to be separated from the economic advisory functions. An attempt to

join these activities in structures such as the ODRs causes unnecessary financing of activities that cannot function without the budget, together with business activities, which can profit from and be part of the free market game. The financing of consulting services with budget resources causes the free financing of some projects from taxpayers' money, involves large sums of money in studies with little prospect of being utilized in the future, and destroys the development of the market of private consulting services. All budgetary entities should strive to separate budgetary from nonbudgetary activities, and adapt to market rules.

From the economic side of advisory services provided by budgetary units, vertically integrated analytic structures must be separated, and these should be able to evaluate or prepare complex sectoral studies. These services should be provided on a fee basis, and should not be financed by the state budget.

This structure would have a different scope of activities, depending on whether it is a budget entity tied to state administration or a commercial project. It seems that the consideration of potential tasks for the new commercial entity is useless. Several large companies are currently capable of undertaking such activities, and in the case of important or difficult subjects, the assistance of foreign companies can always be requested.

In the case of a budget unit, its role should be more of a monitoring unit to monitor and evaluate the studies as to their appropriateness and usefulness for the state, as in the case of sectoral studies or for individual entrepreneurs.

The possibility of acquiring an additional independent opinion from a disinterested party would eliminate or reduce cases of unrealistic reports by private consultants. For small companies, this role could be played by the current economic advisors of the ODRs. As they are paid from the state budget, they could be a trustee, giving the small businessmen an opportunity to receive a second opinion in dubious cases. However, some payments for these services can be levied. It does not seem possible that the organizational structure and statutory duties of the ODRs would allow strictly for consulting activities.

TABLE 1: ADMINISTRATIVE RELATIONS, FINANCING, AND TECHNICAL BASE OF BUDGET ENTITIES

	ODR	SK IOR	SCHR	IN	PISIPAR	AR	I. Nauk	TR	CIS	PKN MJ	SAN EPID	WIS
Supervising Ministry	MAaFE	MAaFE	MAaFE	MAaFE	MAaFE	MoE	MAaFE	MAaFE	MoFC	CoM	MoH	MAaFE
Financing												
-budget	+	+	+	+	+	+	+	+	+	+	+	+
-domestic subsidies	+					+	+					
-foreign subsidies	+					+	+		+			
-business activity (1)	+	+	+	+	+	+	+	+	+	+	+	+
-bus.act. for own purposes	+-		+-			+	+	+-	+	+-		
-payment and penalties to budget	+	+	+-	+	+			+-	+-	+	+	+
Financing entity	UW	UW	MRIGŻ	MRIGŻ	MRIGŻ	KBN 2)	KBN 2)	UW 3)	MWG zZ	MF	MZ	MRI GŻ
Regional branches	49	49	17	17	17	9	16	484	8	9	17	49
Laboratories	+	+	++	+	++	++	++	+	+	+	++	+
Computer labs	++	+-	+-	+-	+-	++	++	+-	+	+-	+-	+-

- 1) Business activity as the "auxiliary business" or as fees for services
- 2) KBN (Committee of Scientific Research) is a monopolist in the financing of whole research activity, and the Agricultural Academies receive additional subsidies from the Ministry of Education for their teaching activities, and Scientific Institutes from the MAaFE (Ministry of Agriculture and Food Economy)
- 3) Agrarian colleges are financed through voivodship offices from the resources of the MAaFE, and colleges for agrarian processing are financed from the resources of the Ministry of Education.

**Notes:**

The + mark at the position state budget indicates financing from this source. According to the budget law, these can be budget entities wholly financed by the state that transfer all their revenues to the budget (such as PISIPAR), or budget entities tied to the budget that finance a large part of even all of their activities from their own revenues (e.g., CIS).

**Foreign or domestic subsidies.** The + mark means additional resources from outside the budget, mainly through performing contractual assignments for enterprises or through activities under foreign-financed programs.

**Business activity.** In practice, all budget entities have potential for managing business activity that brings revenues. The budget entities can, or sometimes even must, utilize them up to the level of set limits. In some cases there is no market for the services, which poses a threat for this activity. An example of that are the Chemical and Plant Stations, where the analytic potential much exceeds the current demand for such services. For budget entities, there are other methods of stopping the outflow of resources, such as auxiliary business or foundations using the entity's assets for their activity.

**Laboratories and computer laboratories.** The marks, from ++ - very good, + - good, + \_ - poor reflects the level of equipment and its modernity. To obtain full information on the potential, one must consider also the number of local branches. In practice, all local branches have computer laboratories, and only in the case of the CIS are there two laboratories and six local branches.

Table 1 indicates that there are eight different state administration bodies involved in the administrative supervision and financial services of the 12 listed entities or budgetary units acting in the agricultural sector. In the case of the State Committee for the Normalization of Measures and Quality, it is supervised by the Office of the Council of Ministers. The other entities are supervised by five different ministries; voivodship offices; and the Committee of Scientific Research, which is an independent government agency created expressly for the financing of scientific research. It is assumed that all these institutions should cooperate with each other, and the role of coordinator should be played by the Ministry of Agriculture and Food Economy. It is obvious that this Ministry is most interested in proper cooperation, and in many cases even makes energetic attempts to extend the scope of the agency's influence. The most vivid example is science, where the approving role, left for this Ministry, has no influence on the policy regarding the scientific and didactic sector. Three representatives of the agriculture sector on the Board of the Committee of Scientific Research, which consists of more than 50 people, cannot influence the scope of financing for agrarian sciences as a whole, and also cannot decide on the financing of particular entities or concepts, within resources allocated to this sector.

Another problem is the possibility for individual entities to access budget resources through different institutions allocating parts of the money. It seems that with one state budget nobody is able to tell how much money from it went to one entity.

In the case of ODRs, SKiOR and TR, the administrative services and direct supervision functions are fulfilled by the voivodship offices, which operate on behalf of the founding body, while being dependent on the finances coming from the Ministry of Agriculture and Food Economy. This regards contracted tasks, which can come from other entities related to agriculture and financed from the budget. An example can be the financing of field research and experiments in the ODR by Scientific Institutes.

According to the budget law, there are two types of financial relations and dependencies regarding the state budget. One type is the budget entities, which are fully financed from the central budget, and at the same time have to transfer all their revenues to this budget. The other type is budget enterprises, which are partly financed from the state budget. Limits of employment and salaries are also established centrally. The majority of the activity of these enterprises should be covered by the revenues they achieve through their activity, but only on a level designated in the budget. All financial surplus should be transferred to the budget.

The budget law allows for economic activity with a profile close or related to the main activity. For these entities to keep money earned in any way, most of them have established auxiliary activities, or foundations, which are even more independent from the state budget.

Such activities are attempts to seek loopholes in the existing law. From the standpoint of the possible processes of restructuring and transformation in this sector they should be analyzed in detail, mostly from the standpoint of separating portions of them from budget financing. Many entities have demonstrated the ability to manage economic activity. Making these entities or their parts subject to market conditions should cause a significant expansion and, in many cases, instead of posing a problem for the budget would become the source of its strengthening through taxes.

Signs shown in the table (+-) are the proof of the unclear position of these institutions. The reason for this is the budget law itself, as well as the need to access resources while the financing from the State Budget decreases.

However, particular attention should be given to the number of local organizations. Where 17 units exist, their number has not changed since 1975 when the administrative division of the country was changed

from 17 to 49 voivodships, and the number of local branches of some institutions was increased to 49. Where the number of branches is lower than 49, one branch services a number of voivodships, or, as in the case of scientific institutes, universities, or schools, there is no territorial division defined.

In the case of technical supply, only chemical, physics, and computer laboratories are included as the most popular and most important from the standpoint of business activities. Additionally, printing workshops are also included, and their scale can be assessed on the basis of Table 2.

The laboratories are well equipped; however, none of them has full equipment but has one or several items of international quality. Quite often in one small town there are several laboratories servicing agriculture, all on a mediocre level. Their costs of operations are covered from the state budget. Some independent laboratories tried to enter this market, especially those financed by enterprises (in the processing sector) and state horticultural farms, in the area of chemical analyses of soil, plants, diseases, and pests. However, these attempts were nullified by the practically free services of the state entities.

Real computer laboratories are only in the ODRs and scientific units. There are differences between the particular entities, but appropriate software and pro-business training of the employees can be found only in these two types of entities. The other institutions financed from the budget use the computers mostly to service their own activities and sometimes to store and process data. In those cases we can only talk of the potential that must be used. The value and importance of these institutions is not questioned, but their approach and use of the collected and processed information, indispensable for the construction of proper market concepts, is questioned. A program to integrate these units with each other and the program with the business community is necessary to disseminate valuable information.

### QUALITATIVE EVALUATION OF SERVICES

Tables 2 and 3 present the wide scope of pro-business activities and services offered by entities financed from the state budget. In advisory services, business information, and publications, the ODRs and scientific entities dominate. The SIPPAP (State Inspection for Trade and Processing of Agriculture Products) dominates in the field of collecting and processing market information. As for other entities, we can state that their activity often duplicates these entities, but most often this is done in bits and pieces, or there is no system for practical use of the valuable works in business practice. Attempts to use this diversified potential by the ODRs are limited because of a lack of resources and their involvement in other types of advisory services and administrative activities that have nothing in common with business.

An example of the scale of diversity is the publishing activity managed independently by most of these entities. There are a lot of low-quality publications. Many subjects are repeated, and others are never discussed. Most of the publications are very specialized and in small numbers, reaching only the group of the closest coworkers. An example of this is the publication of 2,000 copies of monthly magazines published by the ODRs in voivodships where the number of individual farmers is more than 100,000.

TABLE 2: PRO-BUSINESS ADVISORY SERVICES AND INFORMATION

	ODR	SK IOR	SCHR	IN	SIPPAP	AR	I. Nauk	TR	CIS	PKNMJ	SANEPID	WIS
<b>Advisory services</b>												
-business	++				+	+	+	+	+			
-technical						+	+	+		+	+	+
-technological	++	+	+	+	+	+	++	+		+	+	+
accounting and taxation					+	+	+					
<b>Information</b>												
-collecting	++	+	+	+	++	+	+	+	+	+	+	+
-processing	+	+	+	+	++	+	+	+	+	+	+	+
-disseminating	++	+	+		+	+	++		+-		+	+
<b>Publications</b>												
-cyclical	+					+	+					
-subject	+	+	+			+	+		+-	+		

**Level of activity:**

++ very good

+ good

+- poor

**Note:**

The scale of evaluation of Table 2 is based only on the potential of a single element of the given structure. It is necessary to remember that not always an appropriate comparison is possible of huge entities (like universities or scientific institutes) with much smaller ones (technical colleges or extension centers), both in their scale and potential. That is why the main consideration was the targeting of current activities at economic issues and readiness to provide advisory and pro-business services in relation to the potential.

TABLE 3: SPECIALIST EXPERT CONTROLS, QUALITY, AND SANITARY CONTROL

	ODR	SK IOR	SCHR	IN	SIPPAPR	AR	I. Nauk	TR	CIS	PKNMJ	SANEPID	WIS
Expert controls												
-chem. analyses	+		++		++	+	++	+	++	++	++	+
-analyses of diseases and pests		++		+		+	+	+	+IOR	+	+	+
-analyses of seed		+		++		+	+			+		
Quality certificate	+	+		+	+				+	+		+
Quality control	+	+		+	+				+	+	+	+
Sanitary control					+						++	++

**Level of activity:**

- ++ very good
- + good
- + - poor

**Note:**

On the basis of grades contained in Table 3, it is possible to evaluate the level to which the given entities are involved in the listed types of activities; as well as which of the discussed entities work both in the field of performing independent evaluations and control.

A number of the entities have well-equipped laboratories and can perform a wide variety of analyses. As Table 3 shows, most of them have the authority to issue certificates. These authorities have more of a supervising or controlling character, not related to advisory services. In many cases, those who administer these entities express their will to provide advisory services, but it is very difficult to manage these two types of activities at the same time. When comparing the authorities presented in Table 2 with those in Table 3, competencies must be clearly assigned to avoid internal conflicts and save money. For example, the Modliszewice Extension Center, while involved in the promotion of health food, obtained authority to issue certificates in this area. It seems that in the current stage the advisors do not realize fully the difference between advisory services and other services that they have rendered so far.

In Table 3 a striking element is the number of entities that supervise, control, and issue certificates for food products. Structural and technical diversity causes huge costs and low effectiveness, and practically disables coordination of activities, both from the standpoint of running business, and government control of the events in this vast market. The most important issue shown in Table 3 is business difficulties that are the result of the diversification of institutions that issue various certificates. As a result, quite often it is necessary to obtain a number of certificates to export or import an agriculture or horticulture product. An effective commodities exchange, both domestic and international, is the key to dynamize the economy; therefore all technical difficulties and obstacles should be removed as quickly as possible.

TABLE 4: ADVISORY AND PROBUBINESS SERVICES IN THE CONTEXT OF THE BUSINESS CHAIN

	ODR	SK IOR	SCHR	IN	SIPPAP	AR	I. Nauk	TR	CIS	PKNMJ	SANEPID	WIS
Parliament						++	++		+	++		
Government					++	++	++		+	++	+	+
Foreign trade		+		+	+				++	+-	+	+
Domestic trade		+		+	+					+-	+	+
Processing plants	+-		+	+	+	+	+		+	+-	+	+
Storage	+-	+			++	+	+		+	+-	+	+
Purchasing		+			++				+	+-	+	+
Farmers	++	+	+	+	+	+-	+-	+	+-	+-	+	+
Supplies to farms		+	+	++		+-	+-			+-		
Banks						+-	+-				+	+

**Level of activity:**

++ very good

+ good

+- poor

**Note:**

All entities manage activities that are partially or wholly targeted at business or can be useful for business activities. Table 4 shows mainly linkages important for effective business activity in agriculture, and, using a simplified scale, defines the relations of the individual entities to the links of the business chain. This table can also demonstrate the possibilities and scale of using the activities of budget entities by business entities.

Table 4 analyzes the accessibility and scope of advisory and pro-business services in the context of the main business chain. These services are concentrated at the level of Parliament and the Government. These services have strategic importance for the creation of political concepts and new legal regulations. However, as these advisors have weak ties with authentic business, their ideas are too theoretical.

The second level on which the activities of all entities concentrate are the farmers. In the remaining part of the business chains we encounter a void. All those who work as advisors in this sphere usually state that persons and institutions interested can use all their knowledge and experience, but there is no uniform concept for support and promotion of entrepreneurship development.

Pro-business activities are also weak on the side of supply and financing institutions. Especially noticeable is the lack of willingness on the part of the banks to involve themselves in business, and so business people practically have no opportunities. The process of reorganization of banks is slow, but relatively systematic. However, there are no pro-business ties of the banks with the budget entities working in the area of agriculture presented in this report.

The situation shown in Table 4 seems to have influence on the political situation in the countryside and agriculture. Lack of appropriate support for most of the elements of the business chains in agriculture causes direct pressure by the farmers on the government. Vertically integrated business organs could assist in solving economic problems with less direct pressure on the state administration.

## **RECOMMENDATIONS TO OPTIMIZE DISTRIBUTION AND UTILIZATION OF SERVICES**

### **Separate Advisory and Administrative Services**

Analyze all budget entities that interact with the agribusiness sector, from the standpoint of separating advisory and information activities from administrative and regulatory ones, and identify and eliminate duplication of efforts.

### **Separate Economic and Other Services**

In units that do provide advisory services, separate economic advisory services from other specialties.

### **Commercialize Activities**

Lead to full commercialization of economic advisory services, totally separating this form of services from the structures of budget entities.

### **Coordinate Subsector Studies**

Create an entity that would coordinate sectoral studies and entities or individuals in the field who would create the possibility of independent consulting studies. Studies would be used to demonstrate to the private sector new business investment opportunities.

### **Create An Effective Information-Collection and -Dissemination System**

Create an effective state system of information gathering and distribution for use by the private sector. From the scope of competencies of the above units, separate structures dealing with collecting and processing of market information, and standardize methodologies. Structures should be created that will collect and process data for the needs of government administration of all levels. At the same time systems must be created for distribution and making the data available to all persons interested in agribusiness. All or some of the data can be made available for a nominal fee.

### **Create A Market Information System**

Enable the creation of a commercial market system of information. The newly created commodity exchange structures and wholesale markets of agrarian products could use technical resources currently provided by budget units.

### **Reduce Licensing Units**

The number of units involved in quality control, regulatory enforcement, and licensing must be reduced. Their activities must be focused and nonduplicative, and they should have good technical equipment. The introduction of a uniform structure and rationalization of current activities should bring large savings to the GOP.

### **Separate Commercial Tasks**

The scope of tasks that can be commercialized must be separated. Privatization of a large group of tasks that are currently included in the competencies of these institutions seems possible, and this would relieve some responsibilities and financial burdens from the state. The most appropriate location for the privatized entities will be commodity exchanges and wholesale markets.

### **Coordinate Control of Agencies**

The state structures should be subordinate to one Ministry or state agency with a large range of activities (for example, the Agricultural Market Agency). It is necessary to define the dependency of branch offices or local development departments in the voivodship offices.

## PART FOUR

### PRIVATE ADVISORY SERVICES

#### SUMMARY OF SERVICES

A small scope of advisory and pro-business services existed prior to 1989. With the introduction of the market system, there was a rapid development of private consulting companies. They were created as the result of new initiatives by people whose knowledge and experience had so far been used in a limited manner. The personnel of these companies often consists of highly technically qualified employees of academies and scientific institutes, as well as many experienced employees and members of management of state enterprises or administration officials.

There are companies that have a broad spectrum of activities, but most follow a pattern of narrow specialization. The following forms of advisory services are offered by private companies:

- Economic consulting services;
- Technical consulting and farm level processing;
- Technological consulting and services;
- Accounting and taxation consulting and services; and
- Specialist opinions and quality control (Polcargo, PTK Supervise).

The first work done on a major scale was valuation of assets of state enterprises designated for privatization. Business plans prepared according to international standards were necessary, particularly for large projects that wished to use credits of international financial institutions. Polish banks had issued loans to uncreditworthy clients (primarily SOEs and state farms), and they now realized the need to perform a professional economic and financial analysis before approving new loans. There are many examples of cooperation between banks and selected consulting companies, which undertake the appropriate economic and financial analysis of projects, thus reducing the banks' fear of lending.

#### FINANCIAL CONSULTING SERVICES

The market of economic and financial advisory services and consulting is dominated by private companies. The ODRs do offer some competition, but most of their efforts are directed toward one-person businesses or family projects. The ODRs prefer pure advisory services, without being responsible for financial and economic studies, particularly when large amounts of money are involved. The ODR does not want to be accountable for a project that fails. Most often their role is passive consulting for those who do not want to pay for such services.

The advantage of private companies is their active role in the marketing of consulting services, expressed in the search for contracts and taking responsibility for the studies performed.

A new element is the cooperation of private consulting companies with banks, acting almost as an unofficial part of the credit department. This situation benefits both the banks and the consulting firms.

The bank has a financial and economic analysis that satisfies its need to assess the risk of the project, yet it is able to contain its operating costs by not having to permanently employ people to conduct the analyses. Previously the initial proposal of the potential borrower was performed entirely by the credit department, at no cost to the borrower, even if the bank did not finance it. Currently it is performed by consulting companies that are paid by the borrower.

### **TECHNICAL AND FARM-LEVEL CONSULTING SERVICES**

Because of the economic recession the resources of the state budget are dwindling, thereby forcing the intensive restructuring and privatization of some or all of the budget entities. This is important especially in regard to those that can survive on a commercial basis in the market economy.

As a result, private notary offices, survey offices (cadastral), consulting companies and companies of technical and technological services have developed. The genesis of the technological services companies were the result of employees leaving budget entities to form companies, and using technical equipment from privatized state offices. The fast rate of privatization of these offices was caused by the huge intellectual potential of the personnel, and the relatively few assets that were involved in the privatization process.

The companies that were created in this manner are very active in the market, and the services they provide are of high quality. Very often they serve as representatives of foreign manufacturers within the sector for which they provide advisory services.

### **ACCOUNTING AND TAX SERVICES**

Poland has experienced a huge growth in the number of new private companies since the economic reforms of 1989. Many of them are one-person companies, most often family businesses. Generally speaking, there are many small economic entities. Regardless of the size of the company, all of them are obliged to have the same type of accounting and tax systems to satisfy the government tax offices. Only some forms of economic activity have simplified accounting and settlements.

Because most businesses are too small to employ their own accountant, a market for private accounting and financial services developed. The companies servicing this market are highly specialized and have excellent knowledge of the latest accounting procedures, as well as up-to-date knowledge of changes in tax regulations.

Use of such services has many positive effects for small companies. First, it enables them to take full advantage of allowances under the law, as they are dealing with individuals who specialize in the tax field. And, according to Polish tax law, companies that use these services are given an additional two weeks for the preparation of necessary documents. In this area, there are professional services of people who are very well-oriented in Polish tax law, and who can give the most information on its pros and cons, and within its limits, allow business people to use it to the advantage of their company.

## SPECIALIST ADVISORY SERVICES

An important factor is that activities that had been restricted to state companies or institutions — such as quality control for foreign trade — have been handed over to private businesses. An example of such a change is the privatization process in Polcarg. Some of its branches are already privatized, as for example Szczecin. An important aspect of this company is that it is recognized by important international institutions — such as American Society for Testing Materials (ASTM), Grain and Feed Association (GAFA), and International Federation of Inspection Agencies (IFIA).

Similar functions are performed by branches of foreign organizations that operate in Poland, such as the PTK "Supervise" (a Swiss company that is one of the largest companies of its type worldwide). It has its office and laboratory in Gdynia. PTK "Supervise" is a member of the Federation of Oils, Seeds and Fats (FOSFA) and its certificates have worldwide recognition.

## CONCLUSIONS

When reviewing the activity of private advisory and consulting companies, there are a huge variety of problems related both to the merits of their activity and to their structure and organization. This is often the result of factors that these companies are unable to control. Most of them have only been in the marketplace for three years, and they have not yet worked out the optimal solutions for their internal operations or a clear market strategy. The strongest ones are those that cooperate with state administrations, especially in the field of privatization.

A huge scope of work related to asset valuation, economic evaluations (feasibility study), and proposal preparation for newly privatized companies provided them with a great deal of new experience and, at the same time, a source of stable and significant income. These are big, well-organized companies that often have structures and branches all over the country. An additional advantage was the preparation of many privatization studies in cooperation with large foreign companies.

Aside from the well-organized advisory companies, we also encounter companies in which business advisory services are only a part of their economic activity. These companies were usually created within the last year and are trying to enter the market through cooperation with private businesses. We cannot say that the level of their services is much lower, or that the qualifications of their personnel are inadequate. The main problem limiting their development is a relatively low level of investment and the lack of accessibility to appropriate credit facilities for the investors they work with. Very often the impotent banking system is an obstacle, as it shows no interest even in the best of projects.

A new element is the increasingly poor financial situation of the banks due to loan failures. It is especially important that the cost of such a feasibility study is borne by the investor. From the standpoint of business activity, such actions seem well justified. As the cost of a business study usually does not exceed 1 percent of the value of the future project, and at the same time is an element of the costs, the risk on the investor is relatively low. From the standpoint of the bank, it is hard to be convinced of the feasibility of the project if the potential investor does not wish to risk as little as 1 percent of the value of the project, and expects the bank to risk 99 percent. This transfer of risk to other participants in the business chain from the banks will occur often in the near future. Given the circumstances, even small consulting companies will find stable employment.

Development of these firms is also limited by market competition from similar companies financed from the state budget or foreign assistance funds. This competition has many factors, but the most important one is the inadequate technical equipment of private companies. Most of them work on very simple hardware, and very often these are small, one-person companies located at the owner's residence. This is a somewhat vicious circle, as on the one hand there is a lack of hardware because of limited business, and on the other hand there is limited business because of insufficient technical support. Knowing the reality of the Polish investment market, owners of consulting companies do not risk contracting for high credit for additional equipment.

In the period when the most important task facing Poland is privatization, understood not only as transformation of state enterprises, but also as a process of constructing a new sector of private enterprise, there are few domestic or foreign programs targeted at the development of private advisory services. Almost all of the projects undertaken by the government and by assistance programs are targeted at strengthening the state sector or at the creation of new structures that work based on donor financing, and not on market rules. The problems of financing the advisory structures will be separately discussed at the end of this chapter.

As for technical and technological consulting and services, there is a well-developed market. In practice, only private companies or state ones that are fully commercialized dominate. The strongest element of this sector is companies that produce production inputs, construction companies, or companies producing specialist equipment for processing. Given these circumstances, there should be no problem with selecting a company with the appropriate and relatively inexpensive technical services in any field of agribusiness.

The activity of companies that provide specialist services and quality control in international trade is somewhat different. As one of the key elements is international recognition for the certificates issued, significant growth of companies such as "Polcarga" or "PTK Supervise" is highly unlikely. In this field, the already existing companies will modify the scope of their activity, depending on the development of Polish foreign trade.

## **RECOMMENDATIONS**

The activity of these companies is strictly tied to the dynamics of the domestic, as well as foreign market. Each of these companies will define its own strategy and will undertake appropriate actions necessary to remain active in the process. However, it is necessary to present a number of recommendations that should be considered by all participants of the market, and whose goal it is to make the market more effective.

1. Among the array of sectoral studies performed under commission from the government or central institutions, it is necessary to perform a study in the sector of consulting and pro-business services to determine the range of services that exist, and where there are voids.
2. Investigate the scope of activities of private companies, specifically focusing on activities also performed by entities financed from the state budget or other sources.
3. After identifying conflicting private and public sector activities, identify methods and time frames for removing these activities from the state-financed sector to the private sector.

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4. Formulate the scope for technical assistance and training necessary for the development of the business advisory sector. Analyze the possibility of transferring some of the assistance resources to the private consulting sector.
5. Include the employees of the private business advisory sector in training that is made available free of charge to employees of state entities operating in the same field.

## PART FIVE

### ADVISORY SERVICES PROVIDED BY INPUT SUPPLY AND PROCESSING COMPANIES

#### DESCRIPTION OF SERVICES

The most pointed and aggressive advisory services are provided by companies that provide production inputs to farmers and producers, primarily for the company to secure use of the company's products by the farmer. This is actually more of a marketing tool, rather than pure advisory services. Users should be fully aware of this, and should view advice provided within this context. This is more of marketing, promotion, and advertising, than of consulting. The potential recipients of these services should be aware of their character, and should be able to distinguish between real information and promotional gimmicks. Each company that undertakes this sort of advisory service includes it in its costs of activity and adapts it to the features of the product and of the market. Analysis of detailed actions of particular companies makes sense only in the case of using the results for competition or scientific research. Among the input-supply companies are often large domestic and foreign enterprises, with technical resources that are very good and in many cases can be used for training purposes.

A separate service is the consulting and business service provided by procurement and processing companies. The basic purpose of these activities is to acquire raw material for production, and secondly, to make sure that it is of the highest quality possible. Because of the above goal, companies that are involved in such activity must take into consideration all business aspects, which are important not only from their standpoint, but also from the standpoint of the farmers. Obviously, it is impossible to run a business profitable only to the processing company, and not to the producers and users of raw materials.

The Kruszwica Fat Processing Enterprise (SOE) provides the highest degree of advisory and pro-business services. This enterprise supervises and finances seed distribution. The activity is focused on using the right varieties by the farmers in addition to certified seeds. These conditions must be fulfilled by the farmer if he wants his grain to be purchased, and it also serve as a guarantee to the farmers that they will receive a high price for the grain. In recent times, because of a rapid decrease in rapeseed grown, this enterprise introduced new types of advisory services for farmers, which serve to maintain long-lasting business relations: sale of fertilizers and pesticides.

In all these cases it is strictly a commercial activity. Employees who are in charge of it claim that the margin of profit on which they work is lower than in other supplying companies. Also, in the case of pesticides — which is very important for the farmer — the enterprise guarantees the supply of the most effective and fresh inputs, which may not always occur with other suppliers.

#### CONCLUSIONS

In this group of advisory and business services we deal with purely commercial relations between the providers and recipients of services. Both sides wish to create an economic system that will allow all participants to attain appropriate revenues. Employees in this group of consulting, although not fully

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aware of it, are through their actions and business understanding behaving as though they are operating within a vertically integrated structure.

One disadvantage, not always noticed by the supply company, or the procurement and processing ones, is the focused attention on the farmer, without coordination of other activities. This can lead to a complex chain of decisions without the participation of the farmer.

### **RECOMMENDATIONS**

To develop a business chain with all the appropriate linkages, the only possible recommendation is to develop an understanding of the positions of all the participants in the business chain. After identifying these within a particular agribusiness subsector, training or seminars should be organized to improve knowledge on business integration, as well as to exchange information or even establish the first contacts for the future cooperation of all participants within the structure.

## PART SIX

### ADVISORY SERVICES FINANCED BY FOREIGN SOURCES

#### DESCRIPTION OF SERVICES

After 1989 a period of intensive assistance by Western countries for the new democracy in Poland started. The first aspect of this assistance included goods sent to Poland, especially food. It was often discovered later that the proper items were not always selected and this sometimes resulted in an oversupply in the domestic market of imported aid items competing with the same items produced domestically. An example is the case of grain used for bread. The policy of pricing quickly solved the issue of market balance.

After the period of giving and donating came the time of assistance in know-how. It became obvious that Poland has huge intellectual potential, which was underutilized in the former economic structure. The ineffectiveness of the basic business structures was also obvious. This was the most important reason for the far-reaching and long-term involvement of foreign countries and institutions into the organization of new, or modernizing the existing centers of, advisory and business services.

A number of large programs are financed by foreign donors. The most substantial ones are: the U.S. Government, through USAID or the U.S. Department of Agriculture; other independent initiatives, such as the EC-PHARE program, Great Britain's KNOW-HOW and Agricultural Development Fund; other foreign countries' resources given to the EC Committee; or the World Bank and the EBRD, and to some local programs financed directly.

Quite often excess activity leads to overlapping of initiatives, often without donors or the Polish government knowing this. On the local and nationwide levels, there are different support organizations and business representations financed by donors, such as Volunteers in Overseas Cooperative Assistance; Land O'Lakes; Foundation for the Development of Polish Agriculture; National Union of Cooperative Enterprises; Assistance for Cooperative Banks; and Technoserve, which serves as a local center for business promotion in the Sandomierz region.

These initiatives are targeted mostly at advisory services and research all over the country, in individual sectors of the economy, in different regions of the country, or are related to individual economic occurrences. These activities are invaluable as they produce studies that serve as the basis for further commercial activities. The main goal of these initiatives, declared and implemented in further activities, is to provide financing and technical assistance for the key sectors of the economy, to adapt them to free market conditions. These programs are meant to contribute to the creation of a proper background in administration, law, finance, and banking, which are necessary for the proper functioning of a free market, and particularly for the support of the private sector. This also includes changes in the legal structure, reform of accounting and tax codes, the commercial code, and reform of the banking system and system of social security.

One problem of many of these initiatives is the inability to quantify their results so far. All of them have worked in Poland for at least a year, and some as long as three. Some are still at the stage of

organizing their head offices and local structures. In many cases, after more than a year of activity, there is still talk of education of the personnel.

Another issue is the implementation of identical initiatives in the same regions. A classic example is Rzeszów, where there are a number of institutions with identical program profiles, financed from different assistance sources. People from these organizations sometimes said that they did not know the scope of activities of a second, identical organization. An extreme example of managing assistance resources are the attempts to create — from the same EC resources — a program of assistance for agricultural cooperatives with a strong organizational structure, or cooperative development units (CDUs), and at the same time another structure that will implement agricultural programs financed from the same resources, the program implementation units (PIUs). Another example of duplication includes the Polish-American Small Business Institute, and the Enterprise Center, both located in Rzeszów.

Another issue is the problem of using the assistance resources only through cooperation with state organizations and institutions. Despite the declared targeting at private sector, many of the recipients of the assistance funds are organizations financed from the state budget, described earlier. Very often assistance to private initiatives through donor organizations causes the elimination or even destruction of other sectors. The sector of local private consulting and pro-business services is the most dramatic example.

There have been some positive results. These include the local initiatives with Technoserve-Sandomierz; a program for the development of agriculture in the Bydgoszcz voivodship (Denmark); a project that concerns sectors of agriculture (Belgian project for the development of the dairy industry in the Lublin voivodship); a Dutch program for the restructuring and development of greenhouses; the development of rural infrastructure implemented by the Church Foundation for Water Supply to the Country; and business-integrated programs for the development of sectors or policy reform, as in the case of GEMINI. The basic and most important advantage of these activities is proposing and implementing economic concepts or business projects.

There are other institutions that have large financial resources to directly finance and support direct investment in agribusiness projects. These include the International Finance Corp., Polish American Enterprise Fund, or even the EBRD (European Bank for Reconstruction and Development).

Other forms of pro-business activity are managed by such institutions as the European Fund for the Development of the Polish Countryside (Counterpart Fund), which issues credits with an interest rate at 75 percent of the interest rate of the central bank, or the Agriculture Foundation, where the interest rate is 50 percent of the central bank interest rate.

In almost all of these cases, there is a mix of commercial activities with a somewhat subsidized rate of service, either in the form of subsidizing the interest rate on credit and/or on the cost of business advisory services.

There is significant interest in joint venture forms of business activities. The only limitation is an inadequate understanding by Polish entrepreneurs. Too many projects that apply for financing do not comply with basic conditions for project financing, and they cannot be classified as worthy of credit or any other form of support.

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## RECOMMENDATIONS

The many kinds of resources and assistance programs are a great basis for managing complex research and implementing innovative business programs in the whole economy, its sectors or regions of the country. An additional advantage is the possibility of using experts and technical resources of countries and organizations that are the sponsors. This gives the possibility of verifying initiatives proposed by the Polish side, so that they are at a level acceptable to the international community. To fully use such a large and undoubtedly advantageous opportunity for Polish agriculture, the following corrections should be introduced.

1. It is necessary to quickly define sectors for which the use of assistance resources are vital, because of the need of adapting to the standards of international requirements, or where there is a possibility of entering international markets. Further, according to priorities, include sectors whose radical improvement is necessary for the domestic market.
2. It is necessary to perform a full inventory of programs that are directly and indirectly related to the agribusiness sector. Then, through a uniform system, these programs should be coordinated to ensure optimum implementation in the most appropriate areas throughout the country. This should also be adapted to regional traditions of production. There should not be a duplication of efforts.
3. Undertake a review of the programs based on their effectiveness to date, and identify successes and areas for corrections. The analysis should include analysis of costs, and define more precisely the types of activities completed.
4. It is necessary to include more involvement in the assistance programs by people and companies from the private sector. Eliminate the unnecessary competition between the assistance programs to fully assist the developing market of consulting and business services to entrepreneurs.
5. Analyze the possibility to design and implement an integrated program for a designated sector as a model for further effective donor assistance.

## PART SEVEN

### PRIVATE SECTOR AND LOCAL GOVERNMENT BUSINESS ORGANIZATIONS

#### DESCRIPTION OF ORGANIZATIONS

The small size of traditional private Polish farms is a factor not only for the farmers, but also for the newly emerging private business sector, in both processing and distribution. It was noticed very quickly that without this sector being organized, the possibility to influence economic activities and policy would be very limited. The first local initiatives were the Economic Chambers, later organized into the National Economic Chamber. Work on an act on the Agricultural Chamber has been in progress for a long time, but so far there is no real prospect for this law being passed by the Parliament.

Despite certain limitations, mostly of a financial nature, there are many self-government institutions (private sector) that are focused mostly on the consolidation of private business and on assistance, both in consulting and in business services. Examples include the Craftsmen Chambers, Associations of Private Entrepreneurs, Association of Private Commerce and Services. Others exist that are associations of representatives of similar professions, such as: Polish Economic Society, National Technical Organization, or the Association of Accountants. However, these organizations are concentrated on the protection of interests of the professional groups and not always bringing their influence to bare on the business environment as a whole.

Many funds and foundations were created that declare pro-business activities in their statutes. Those that found sponsors, such as those described in the previous chapter, created large, often nationwide, structures. The other ones, that try to base their activities on Polish business, domestic resources, or their own economic activities, have huge problems with the implementation of their statutory activities, using most of their resources for day-to-day expenses.

The Agriculture Trade Unions and Sectoral Unions of Producers are also on a very specific development path. After a period of activity of trade union character, with the majority of it dedicated to claims and demands, they are slowly undertaking activity related to the organization and promotion of agribusiness. However, their financial resources, coming mostly from membership fees, do not allow them to engage in a wider scope of actions.

The Sectoral Unions are much more strongly oriented toward pro-business activity. This is the result of their earlier involvement in business issues and their widespread activities in providing inputs to producers, as well as selling the agrarian products. We often see their cooperation with large food processing enterprises and networks of stores for products that do not need to be processed.

A very interesting element in the field of advisory and pro-business services is the work of local governments (*gmina* offices). The current law on local self-government allows them to undertake and be involved in certain forms of economic activity. An additional important element is the pro-business attitude and promotion of individual initiatives in the *gmina* because of the need to look for additional financing for the *gmina* budget. Each new economic initiative is the source of revenue for the *gmina*. There are also elements of competition appearing in the field of optimizing conditions for investment in

a given *gmina*. In Solec Zdroj in the Kielce voivodship, the local administration has a number of pro-business initiatives that were undertaken, and they also stated their readiness to support all outside initiatives that are ready to work in that field in their *gmina*. Units that can be especially helpful in the *gmina* office include the Planning Department, Finance Department, Department of Construction, Urban Planning and Architecture, Department of Zoning, Agriculture and Land Management, and the Department of Communal Economy. Statutes of many of these departments contain the obligation to show and support economic initiatives. In an appropriately functioning self-government office these should constitute elements that would support private sector initiatives.

## CONCLUSIONS AND RECOMMENDATIONS

This section has described the activity of pro-business organizations that are based primarily on local or, in the best cases, domestic financing (subsidies of central government for the *gminas*). An advantage here is the fact that such initiatives are undertaken on a local level. We see a large effort of both individuals and companies directed at strengthening their position as businesses, and also at the creation of their own, authentic representation to work with state administration, local governments, and representative bodies in the *gmina* or in the country.

The organizational and financial standing of these institutions is a reflection of the status of Polish business. Companies that are starting their activity and want to attain fast profits do not always want, or are unable to think of the long run. The free market rules are too often perceived as the competition of all people against each other. Many of the new business people believe in their talents and are certain that they will reach a dominant position in the market through individual actions. Cases of business failure begin to serve as an incentive for the smaller companies to organize joint representations and self-help type organizations.

A major problem is the weak financial standing of these organizations. This is the result of low membership fees, a small number of members compared to the number of existing companies, and creation of competitive organizations that have the same statutory duties.

The strongest in organization and financial resources are local governments. Their activity in the field of pro-business and advisory services appears to be an attempt to fill a certain organizational and promotional gap on this level. All other organizations work at least on the voivodship level, with further structures in the country. Some results of their local activities are noticed in central cities of the voivodships, where they are located. Such *gmina*-cities do not have to make additional pro-business efforts. The remaining voivodships and the rest of the country work in somewhat of an organizational void, which the *gmina* offices are trying to fill.

As local government is in an enforcement and regulatory position, the *gminas* are not always able to properly implement tasks related to promotion and representation of business. Sometimes the need to attain fast, immediate profits to cover the needs of the *gmina* budget causes lack of flexible policy for the prices of land and commercial areas. This brings unnecessary conflicts in relations with local business, and this demands a long-term solution.

To make the activity of these structures more effective in assisting the business community, the following actions should be undertaken:

1. Fuller investigation of local pro-business initiatives that act on the voivodship level, and definition of their domestic and *gmina* structures, if they exist.
2. Based on a randomly selected sample, define the pro-business activities of the *gminas* and define their role in this field with a law. Consider the possibility of creating a special program, targeted at the development of business self-government organizations, which would be independent from the *gmina* offices.
3. Consider the possibility of moving resources from the national budget and assistance funds to support private business organizations, specifically focusing on promotional and training activities.

## PART EIGHT

## CONCLUSIONS ON THE ADVISORY SERVICE SECTOR

## DESCRIPTION OF SERVICES

Table 5 presents the existing level of cooperation for agricultural advisory services to users. The evaluation grades simplify the existing problems and allow for further study to make the activities of many entities more effective.

TABLE 5: SERVICES AVAILABLE AND GROUPS REACHED

	1	2	3	4	5	6	Overall
Parliament	++	+			++	+	++
Government	++	++	+	+-	++	+	++
Foreign trade	+-	+	+-		+-	+-	+-
Domestic trade	+	+	+-	+-	+-	+-	+-
Processing	+	+	++	++	+-	+-	+
Storage	+	+-	+	+-	+-	+-	+-
Purchasing	+	+	+	+	+	+-	+
Farmers	++	+-	+-	++	++	+	++
Supplies	+	+-	+	+	+	+	+
Banks	+-	+-	+	+-	+-	+	+-
Advisory - ODRs	+	+	+-	+-	++	+	+

++ Outstanding

+ Good

+- Poor

- 1 Advisory Services Financed from the Central Budget
- 2 Pro-business Services Financed from the Central Budget
- 3 Private Pro-business and Advisory Services
- 4 Advisory and other Services of Processing, Purchasing and Supply Companies
- 5 Advisory Services Financed from Foreign Resources
- 6 Pro-business Organizations: Self-Governing and Self-Financing

Note:

Table 5 shows the targeting of the particular types of advisory and pro-business services at the different levels of the business chain. It also presents a summary description, to demonstrate the scale of the activities so far and the need of further studies, in order to define needs and lead to appropriate saturation at every level of the business chain. Additionally, the Extension Centers were introduced into the business chain to present the relations between the remaining forms of advisory services with this leading group.

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When analyzing the above table, we can see that relatively proper advisory services are guaranteed by the state authorities for the farmers. A separate problem is the scope of utilization of the available potential of these services. There are huge unused reserves. There is also a wide range of new Polish firms that require access to business services. What tends to happen, however, is that foreign sources of funding continue to deal with the same state entities in terms of allocating resources. The agencies continue to channel funding to the same groups.

What is also important is the lack of even a single structure that would properly service the whole business chain. In turn, in these groups that received good and very good evaluation marks for most of the links of the business chain, to make the level of service possible it has to be run by a number of companies or budget institutions.

### RECOMMENDATIONS

There are certain specific features of advisory and pro-business services that are important for the development of agriculture in Poland. The following recommendations will make these services more effective.

1. An appropriate policy toward advisory and pro-business services will be possible, provided that these activities are considered an independent and important sector of the Polish economy.
2. Providing a proper and long-term program for this sector is especially important in the period of the structural changes of the economy. At a time when the most important issue is the transfer of economic and technological knowledge, the proper work of probusiness structures is, undoubtedly, a key matter.
3. To perform an assessment of the sector of advisory and pro-business services, first a detailed investigation of the areas where private firms exist and work is crucial.
4. At the time of performing the study of the private sector, it is necessary to identify the sectors of industry and processing, and within them enterprises where advisory and pro-business services occur. Evaluate the scope of their work from the standpoint of strengthening these entities.
5. Based on the wide knowledge of the budget entities, analyze in detail the segments of their activities that bring or can bring any revenues.
6. Compare the results of analyses from points 3, 4, and 5 as the basis to establish restructuring decisions and the future policy toward this sector.
7. Define the stages and speed of changes, the necessary activities of the government and other interested parties, that would facilitate the process.
8. For the implementation of the above recommendations, an interdepartmental task force should be created, whose work would facilitate the establishment of concise concepts, with no harm to the citizens, business, or state.

**ANNEX E**  
**LEGAL REFORM NEEDS AND OPPORTUNITIES**

## **LEGAL FRAMEWORK**

Poland's legal framework has a significant impact on the extent to which the SME agribusiness community has the ability to capitalize on capital formation and investment opportunities that it identifies. Most of the legal framework presently in place was established prior to the political and economic reforms of 1989. At best there is in place a system of laws and regulations that were designed to address transactions among state-owned companies within a centrally planned economy, with only modest reforms undertaken in a haphazard manner to begin to address the needs of private businesses operating within a market-oriented economy.

As a result, SMEs in the agroindustry sector find that the legal and regulatory environment is not suited to a market-oriented economy. A comprehensive and systematic review and revision of the legal and regulatory environment is required to accommodate the needs of a private business sector. A number of laws are geared specifically to the agroindustry sector, and general GOP legislation and policy affecting the sector must be revised, developed, or eliminated to support the development of the SME sector in agroindustry.

### **LEGAL ISSUES CONCERNING AGRICULTURAL PRODUCTION COOPERATIVES**

#### **Cooperative Property Ownership**

The primary problem regarding agricultural production cooperatives is the issue of property ownership. This includes land, fixed assets, and capital. Because of the lack of laws or regulations that delineate how to divide cooperative property, cooperatives that were established during the communist era, and that would now prefer either to reorganize along western models or to liquidate entirely, risk losing some or all of the property that the cooperative owns. A revised cooperative law has been under review by a Sejm Commission for almost two years. Until it is passed, cooperatives have no clear mandate on how to revise their legal status in order to participate more effectively in the market economy. Their business operations and plans for new business development are stymied pending the outcome of the new legislation.

The property of the cooperative belongs to it, not to its members. The members can participate only in part of the overall income generated by the cooperative. The cooperative must establish the following obligatory funds:

- A fund consisting of members' shares (the payments of members' shares);
- Five percent of overall income to a stock fund created from the payments of entry fees, property values received free of charge, overdue and precluded obligations from part of the overall income of the cooperative; and
- A development fund that is created in the central supervisory union, if the cooperative is its member, or in the Supreme Cooperative Council.

The remaining part of the income can be allocated for other nonobligatory funds, increasing the money contributions or shares of the members, or be designated for division among cooperative members

according to the number of days worked by the members in a given year and for bonuses and rewards. There is one serious limitation concerning the nonobligatory funds. The cooperative may create them, but the establishment of a fund that encumbers the costs of operations of the cooperative requires the approval of the Minister of Finance.

In practice, the members are not owners of the cooperative property; they only participate in its income. They can distribute only part of the cooperative income among them. The contributions and money shares are symbolic and do not reflect the value of the cooperative's assets, despite the valuation of the assets that was performed on the basis of a special act, introduced in 1991. Therefore, the cooperative's property is still, de facto, cooperative ownership — a category of ownership created under the previous political system, something in between state and private ownership. It still exists, despite the fact that the notion of cooperative ownership was removed from the Civil Code.

The rules regarding liquidation of cooperatives are also nebulous regarding this issue. The property of a liquidated cooperative can only be designated for cooperative or social purposes, and cannot be divided among members. The former members of the cooperative do not have a right to participate in the stock fund and other property of the cooperative. As a result, members cannot be certain that they will retain any of the cooperative's assets if the cooperative is liquidated. This provides little incentive to reorganize to participate in the developing market economy.

### **Proposed Changes**

A special parliamentary committee has prepared a draft of the amendment of the cooperative law. The amendment contains proposals for changing the rules governing the cooperative property and distribution of income. Members will be granted almost full freedom in their decisions on disposing of the overall income. The general assembly of the members will have an obligation to designate at least 5 percent of income for the increase of the stock fund, but only when the amount of this fund is lower than the amount of the obligatory contributions. In agricultural production cooperatives (and labor cooperatives) the rule for distributing income according to the member's work contribution is to be maintained. It is acceptable to distribute the overall income in the form of interest on shares or monetary contributions. According to the draft version, the amount of the interest is not limited (so far it has been limited to the amount of interest paid on term deposits in banks).

The cooperative's statutes will enable cooperatives to allocate to former members of the cooperative a right to participate in a specific part of the stock fund and other property of the cooperative. In the case of liquidation of the cooperative, the Cooperative Council (a successor of the Supreme Cooperative Council) will be able to allow the general assembly of the members to decide on a partial or full distribution of the property of the cooperative under liquidation among its members. The guideline for the Cooperative Council is to be "the level to which the members contributed to the creation of the cooperative's property." It is not clear what criteria the Cooperative Council will use to measure the "level of contribution."

The obligation to obtain the approval of the Minister of Finance to create funds that encumber the cooperative's costs has been removed.

The changes proposed by the special parliamentary committee move in the direction of transforming the cooperative property into private property of the cooperative's members. However, the draft does not liquidate the category of cooperative ownership, but allows the members to use it to a higher degree than before.

### **Additional Requirements**

The issue of cooperative property ownership for cooperatives that were established prior to 1989 has to be fully resolved, either to enable full private ownership of cooperative property, or to determine how assets will be divided between members and the state. Both the members of the cooperative and the state put forth their claims regarding the property of the cooperatives. Both parties contributed to its creation: the members through their work, the state through supporting the cooperatives in different ways (price subsidies, grants, discounts, exemptions, and so forth). Cooperative property should be privatized, with the interests of the members taken into consideration, for example, by giving them part of the property without additional costs based on a formula to value a member's prior contribution to the cooperative.

After the ownership transformations, the criteria for the distribution of the overall income of the cooperative should be based on the amount of member shares or contribution, and the level of turnover a member had with the cooperative — such as purchases from the cooperative and sale of agrarian products to the cooperative.

Members working for the cooperative should be hired on the basis of an employment contract with the cooperative and should not participate in the overall income of the cooperative simply because they are employees. The act should contain no limitations on the distribution of the overall income of the cooperative, especially the obligation to create various funds. Any cooperatives establishing themselves under the new law should be permitted to organize and operate along western models regarding membership and legal status.

### **Land Contributions**

Current regulations obligate a member to contribute all or part of the land owned by the member to the cooperative. This obligation may also include buildings and facilities on the land. The cooperative obtains the right to use the land at the time it is brought in as a contribution. There are, however, additional limitations of the rights of members regarding their contributions. A member can withdraw the land contribution only after his membership expires. In cases where the member wishes to sell the land that he contributed, the cooperative has a priority purchase right. The member is obligated to notify the cooperative of his intention to transfer the ownership of the contributed land.

When the member withdraws the land contribution from the cooperative, he receives the same land, "provided that the needs of the collective economy are not in the way." In such a case, the member receives "land of equal value, taking into consideration the interests of both parties." In the case of a difference in size or usable value, the parties settle the matter on the basis of market prices at the date of the transaction. All arising disputes can be settled by state courts.

### **Monetary Contribution**

The cooperatives' statutes may obligate the members to make a monetary contribution. In lieu of such a contribution, the cooperative may take production inputs, such as livestock, feed, seed grain, tools, and so forth. Their value is appraised according to their condition and prices at the date of bringing them into the cooperative. The monetary contribution and the appraised inputs are then valued according to official purchase prices of quintals of rye.

Interest is paid on the monetary contribution. The amount of interest is specified in the statute, but it cannot be higher than the highest interest rate paid on personal term deposits in banks.

The monetary contribution is returned after membership expires. It is returned in cash, in an amount that enables the purchase of the same amount of quintals of rye that were specified when the value of the contribution was appraised.

### **Proposed Changes**

It is proposed to discontinue the limitation on the interest rate on monetary contributions. The draft also envisages increasing the monetary contributions along with the distributed overall income of the cooperative. The amount of deductions for increasing the contributions and manner for distributing among members the resources designated for the contribution are to be defined in the statute. The draft does not propose any other changes on the contributions.

### **Additional Requirements**

The category of monetary and land contributions should be eliminated. The current solutions breed disputes and do not give members any guarantee of recovering their land in the case when the cooperative decides this land is necessary for the "collective economy." The valuation of monetary contributions into quintals of rye creates an uncertainty of recovering the contribution based on its real value because of other changes in the marketplace. Members of the cooperative must be sure that they will be able to recover their land and money contribution based on an accurate valuation of the items being contributed based on a formula that accurately represents their fair market value. Currently they have no idea what the real value of their contributions will be after the membership expires. The land contribution should be replaced with a lease contract, and the monetary share with a loan contract.

### **Central Cooperative Organizations**

Cooperatives may enter, according to their own will, one of the central cooperative associations that performs inspection and auditing functions. They may also be members of other cooperative associations. The Supreme Cooperative Council performs the functions of such an association, in addition to liquidation and bankruptcy procedures for any cooperative that does not belong to a central association.

The current law reserves a number of rights and functions for the central associations, or, when appropriate, the Supreme Cooperative Council. These include:

- The right to contest a decision of the general assembly of members or of the cooperative board because of noncompliance with law or statute;
- Auditing rights;
- The right to make a decision to put the cooperative in for liquidation (if the cooperative constantly breaches the law or statute, or when the cooperative has ceased activity for at least six months);
- Rights regarding the management of liquidation procedures of the cooperative;
- Right to decide on the establishment of the development fund, which is designated for assistance to other associated cooperatives.

### **Proposed Changes**

The draft law assumes that cooperative associations would be involved solely in inspection and audit activities. Cooperatives may form a separate association to manage training and advisory activities. Associations with oversight functions cannot be involved in economic activity. Cooperatives that do not belong to any association have to commission the audit for a fee from a selected oversight association or authorized auditor. The cooperatives will be obligated to subject themselves to audits (analysis of legality, economy, and appropriateness of activities) at least bi-annually. These regulations are meant to protect the interests of their members.

The proposed Cooperative Council (currently the Supreme Cooperative Council) is to be a body created by the Prime Minister, who will also create its statute. Members would be nominated by the Prime Minister from among candidates proposed by regional or inter-regional cooperative sessions, and from delegates of ministries listed in the statute. The number of members coming from cooperatives should constitute two thirds of the Council.

The Cooperative Council shall retain some important rights in relation to the cooperatives:

- It can submit the cooperative for liquidation if the cooperative constantly breaches the law or statute, or if the cooperative has ceased activity for at least one year;
- It can allow, in the case of liquidation of the cooperative, the general assembly of its members to make a decision on full or partial division of the remaining assets among the members. The criterion for the division is to be "the level to which each member contributed to the creation of the cooperative's property." The Council shall have important interpretation rights when defining the criteria that will be the basis for evaluating this "contribution."

Other rights of the Cooperative Council include control and supervision of the oversight associations, initiating and discussing legal acts pertaining to cooperatives, presenting information and conclusions to the Prime Minister and oversight associations, and representing Polish cooperatives abroad, among others.

### **Additional Requirements**

The proposed organization of the Cooperative Council is an attempt to put two concepts into one body:

- The Cooperative Council as a government agency dealing with cooperatives; and
- The Cooperative Council as the representative of the cooperative movement on a national level.

The cooperative movement should create its own representative body on a voluntary basis. If the cooperatives are interested in creating a representative body, the act should enable them to do so. The issues of supervision, audit, and the right to liquidate a cooperative being vested with the Supreme Cooperative Council should be decided by the cooperatives themselves by voting on the statute of the Council. The Council should not have the right to decide on the division of the assets of liquidated cooperatives. A cooperative should have the authority to undertake this procedure on its own as long as it is done within legal guidelines.

## **REAL PROPERTY LAW**

### **Definition of Real Property**

Real estate refers to that part of land that is a separately owned entity (land), in addition to buildings or parts of buildings permanently tied to the land, if on the basis of special regulations they constitute a separately owned property. Each real estate has its own mortgage register.

Agrarian real estate (agrarian land) means property that is or can be used for production activities related to farming in the area of animal and plant production, including horticulture, orchard production, and fish breeding.

### **Limited Property Rights — Usufruct**

Usufruct here refers to land belonging to the State Treasury. This type of usufruct refers to land used by an agricultural production cooperative. The usufruct can be established for a limited or unlimited period of time, but it expires at the time the cooperative is dissolved. If the usufruct concerns land with buildings, then the buildings can be purchased. Buildings and other facilities constructed by the agricultural production cooperative on the land it uses belong to the cooperative, unless the decision on the usufruct made a restriction that they are to become state property. When the usufruct expires, buildings and facilities permanently tied to the land become the property of the State Treasury. The cooperative may demand payment for the value of these buildings and facilities.

## **Mortgages and Mortgage Records**

A mortgage is a form of material security. Unlike the case of security in the form of movable property, the mortgage encumbers the rights of the real estate. The Law for Mortgage and mortgage records is directly connected with the system of property guaranties and securities. The law regulates the rules of the real estate register and outstanding debts.

Mortgage registers are official registers introduced to disclose the legal status of the real estate. They should guaranty safety in the trade of the real estate, in the cases of simple fee, perpetual usufruct and, recently, cooperative ownership rights to a housing unit (from March 1992). The mortgage registers are universal, which means that there is an obligation to establish and manage registers for each piece of real estate. The registers are open, which means that anyone has the right to look into the register (article 2) under the supervision of an employee of the court.

The mortgage register can contain information on property rights for a piece of real estate, that is, simple fee (ownership), perpetual usufruct, use, cooperative ownership rights, and mortgage. The mortgage register is composed of four parts. Part I identifies the real estate and all matters related to it. Part II contains the data on the owner and perpetual user, if the real estate is under perpetual usufruct. Part III contains the limited property rights that encumber the real estate, with the exclusion of a mortgage. Part IV of the register is used solely for registering the mortgage that encumbers the property.

Under Polish law, mortgage collateral can refer to rights of real property, debt secured by a mortgage, and the rights of a cooperative member to rights allocated by the cooperative. This refers to ownership rights of a housing unit, rights to a commercial unit, and rights to a single-family house.

The guarantee of debt repayment to a lender (creditor) through establishing collateral in the form of a mortgage gives the creditor a privileged position. The creditor can collect the debt from the encumbered property regardless of who its current owner is, with priority over personal creditors of the property owner. The collateral is stable, the subject of the collateral is high in value, and often is indestructible (the land).

One exception that breaches these rules is the statutory mortgage. It secures a claim by the state, and it is created on the basis of the law itself, without the need to enter it into the mortgage register. Thus, this mortgage can be established on property even for which there is no mortgage register. It remains in effect even after property ownership is transferred although the lien was not registered, and it has priority over other mortgages. This instrument is used in exceptional cases, mostly to satisfy tax obligations to the State Treasury. It is, however, very dangerous in the case of real estate purchases. When a person purchases real estate or a mortgage to be used as collateral, there is no certainty that the property is free from a statutory mortgage.

## **Additional Requirements**

The system of mortgage registers does not guarantee full safety for the sale of real estate or its use as collateral. The mortgage registers are incomplete. According to the law, all real estate must be registered. This does not always occur and the GOP lacks the financial resources to enforce this. It can take six months for the government to register property in the appropriate registry because of personnel shortages. The GOP must allocate resources to hasten the process of registration, and enforce its registration.

The same property could be sold to more than one buyer. Mortgage registers are not current. A registrar can issue multiple ownership certificates to a property owner (or former owner if the transfer has not been registered), thereby allowing the property owner to encumber the property with a variety of claims against it, unbeknownst to the other creditors. The GOP should devise a centralized registry system that provides current information regarding property ownership and encumbrances, and that is viewed by creditors as having integrity for their purposes.

The statutory lien should be eliminated, as in practice it constrains free and secure trading in real estate that the law on mortgages is meant to serve. The claims of the State Treasury should have priority in collections over other claims, but their collection from a mortgage should be possible only when it is entered in the mortgage register.

### **Land Registration**

The Geodesic and Cartography Law of 1982 proscribes that the appropriate division of a state administration office at the primary level (*gmina*, district, city) manages the registration of land and buildings. The register must contain specific information. The basic element of the register is the data on the land plot. This includes the location, borders, area, type of usage, and quality class of the land. Information on buildings must include their location, designated use, usable functions, and general technical data. The register should also contain data on the owner of the building and the owner of the land.

In practice this system functions very badly. This is caused by the lack of adequate finances in the local administration offices, which in turn causes a shortage of personnel and technical resources. Changes regarding ownership, subdivision of real estate, and so forth are entered long after they have taken place. As a result, the system is not a credible source of information on the actual material and legal status of land and buildings, and creates major barriers for the sale of real estate, tax collection, and so forth. This impedes business activity, and results in lost revenues to the local and state treasuries.

### **Additional Requirements**

The land registration system should be reformed in order for it to serve a variety of purposes. These include tax collection, management of ownership rights, business development, urban planning, and adequate development of infrastructure (water, sewage, energy, telecommunications), proper social services, and environmental protection, among others. Local government must enforce land registration laws. Timely land registration would enable authorities to begin to monitor land development and assess appropriate tax revenues. Changes to real estate should be registered prior to implementation to ensure that land is being used for purposes that are in line with resources to support it, and that the proposed use does not cause harm to citizens or the environment.

This cadastre should be organized by *gmina*-level administration (cadastre services, financial and tax). The first priority should be the tax cadastre, as this will provide immediate financial benefits to the *gmina*. This would also serve as the basis for a legal cadastre. The legislative changes should enable the *gminas* to levy taxes on real estate according to its market value, rather than simply according to its size, as is the present practice.

## Land Integration

Sixty-five percent of the farms in Poland are on subdivided plots, and they do not have adequate access to roads. The purpose of land integration is to rationalize the size and location of the smaller farms to make farming more economically viable. Approximately 55,000 hectares are integrated or exchanged annually. Approximately 2 million hectares of land must still be integrated or exchanged. The existing legal solutions for this process are not a barrier for the integration and exchanges, but the implementation of the program is a problem because of the small amount of resources available to implement it. The government proposed to consolidate the remaining 2 million hectares within 15 years. The government would have to increase the rate of land that is integrated to more than 130,000 hectares per year to accomplish this. Given present GOP budgetary constraints, these resources are unavailable.

## Additional Requirements

Land integration is proceeding too slowly. Small, subdivided plots cannot be the basis for viable agricultural production. The GOP must allocate resources to hasten the land integration program. Economically viable agricultural production can occur only when economies of scale are achieved. This requires fields to be of certain minimum sizes to reduce the per-hectare input costs, so that output will be cost competitive for the domestic and export markets.

## State-Owned Real Estate

Land that belonged to the State Treasury or to the *gmina* (with the exclusion of land from the National Land Fund) that, as of December 5, 1990, remained under the management of state legal persons other than the State Treasury, became the subject of perpetual usufruct by force of the law. The rights of state farms regarding the land they managed as of December 5, 1990, are regulated by a separate act.

Buildings and other facilities, as well as premises located on the land described above, which are the property of the State Treasury or the *gmina*, and which on December 5, 1990, remained under the management of state legal persons, became the property of these legal persons. If they, or their legal predecessors did not construct or purchase the buildings with their own resources, then the buildings were purchased for a fee. Cooperatives, as of that date, could apply for perpetual usufruct of the land and for the granting of ownership rights to the buildings, facilities, and premises located on this land.

## Agricultural Property of the State Treasury

The act of October 19, 1991, on the management of agrarian property of the State Treasury regulates the management of the property of the State Treasury in relation to agrarian real property as defined by the Civil Code, and other real property located in areas designated in zoning plans for agriculture. The act also covers other real property and portions of the State Treasury's property that remain after the liquidation of state agricultural enterprises and other agrarian property taken over by the State Treasury.

The rules for management include real estate managed by state entities; property used or owned by individuals and legal persons; by other organizational entities; and properties that are part of the

National Land Fund. The property of the State Treasury, described above, constitutes the Agrarian Property Stock of the State Treasury.

The act establishes the Agricultural Property Agency of the State Treasury, which the State Treasury entrusted with the execution of ownership rights in relation to the properties defined above. The act defines the duties of the Agency and the manner for the management of the Agrarian Property Stock (for example, sale, lease, and rental, entrusting with management, and so forth).

A variety of means exist by which agricultural property can be added to the agrarian property stock that will be managed and disposed of by the Agricultural Property Agency. The property of state farms (PGRs) is turned over to the Agency by the founding body. This occurs after the liquidation of the enterprise and its deletion from the state enterprise register on the basis of the decision of the founding body.

Real property from the National Land Fund is given to the Agency on the basis of the *voivod's* decision. Real property taken over by the State Treasury on the basis of special regulations, that is, land exchanged for retirement benefits, has to be relinquished by the regional body of government administration, or any appropriate administrative body, within 30 days of when the decision for the state to takeover the property became valid.

Agrarian real estate that is the property of the State Treasury and is used by individuals, cooperatives, or other nonstate entities remains in their use under unchanged conditions until sale or lease contracts are concluded with the Agency. If, within two years from the creation of the Agency, the existing conditions of the land's use remain unchanged, then such use, established on the basis of administrative decision or contract, expires. Expiration of the decision and transfer of land into the Agency's stock occurs by way of decision of the regional body of administration. The actual handing over of the real estate into the stock of the Agency is done with a protocol prepared by the Agency and the entity that was the user of the land.

Until the land is taken into the stock, the law does not allow the Agency to dispose of and manage the property. Until the Agency takes the property, the user could separate out and sell the housing stock of the PGR, and the founding body could transfer to the *gmina*, free of cost at the *gmina's* request, all property used for social, cultural, and sport purposes, together with the appropriate land.

The regulations enable the Agency to "manage" property through the sale of all or part of the assets; lease or rent the assets; contribute all or part of the assets into a company; turn the assets over to management; and entrust an appointed administrator for a specified period of time with the duty of managing the assets if there is no possibility to manage them in any other manner.

Land that is part of the Agency's stock can also be left idle, given to the State Forests for forestation (at the motion of the Agency and based on the decision of an appropriate administrative body), or be given to the *gmina*, free of charge, for infrastructure investments.

## **Sales of State-Owned Agricultural Real Estate**

In regard to the sale of state-owned real estate, the option to administratively give land to a user was waived. The rule that only that property that was included in the list prepared by the Agency can be sold was maintained. According to the regulations of the Civil Code, there are priority purchase rights. These rights apply to co-owners of agrarian real estate if they are managing a farm on jointly owned land (article 166 of the Civil Code), and to lessees, if the lease was for a period longer than three years, or its actual period was longer than 10 years (article 695 of the Civil Code). Persons who have priority purchase rights to buy are obliged to submit within a one-month period a statement confirming that they wish to exercise this right.

When such a statement is not submitted, or such a right is refused, the real estate and other property included in the list are sold in a competitive bidding process. The Agency makes a public announcement of the sale. If the value of the property exceeds the equivalent of 5,000 quintals of rye, the announcement must be published in newspapers nationwide. The Agency organizes an open or competitive bidding. The open bidding is organized to get the highest price, with an evaluation of bids submitted to award the property to the most appropriate bidder.

The price of one hectare of land is established based on market prices, or by multiplying the estimated value of one hectare by the price of one quintal of rye, according to the regulations on farm tax, as of the date of sale. The estimated value is established according to the type and classification of land, which can be found in the land register, and according to the tax regulations in a given area. The price of one hectare of land is applied to persons who have priority rights, and to buyers who are designated as the buyers of the property on the basis of the current regulations. It is used as the starting (minimal) price in open bidding.

Detailed regulations on the sale of real estate and its portions included in the Agency stock, conditions for paying in installments, and the estimated price for the land are contained in the Decree of the Minister of Agriculture, dated January 16, 1992 (Journal of Laws, #10, item 39). The price achieved in the open bidding is the sale price. The Agency may agree to receive the payment in installments. Sale of real estate is managed by the Agency, or an entity to which it commissioned to undertake the sale.

Another form of managing the stock of land is transformation of a state farm by the Ministry of Privatization into a single-person company of the State Treasury, at the request of the Agency, or at the request of the director and employees' council. The rights of the State Treasury are represented by the Agency. These companies are governed by the Act on Privatization of State Enterprises, dated July 13, 1990. Third parties are not allowed to purchase shares in these companies.

The case of administration is intended to be very limited, and relates only to properties managed by state agencies until the time of liquidation. Administering a property will be in place for property included in the Agency's stock that is transferred from state entities that do not have legal status, and to the state forests. The transfer occurs on the basis of the Agency's decision for a given period of time. The details of transferring property included in the Agency's stock is described in the decree of the Minister of Agriculture of January 15, 1992.

### **Leasing of State-Owned Agricultural Real Estate**

The main form of management of the agrarian real estate of the State Treasury is leasing, both to individuals and legal persons. The properties that are to be leased are included in a list prepared by the Agency. Conditions of the lease are established on the basis of bids. When a number of equal bids are put in, priority is given to a company formed by workers from the enterprise that is to be leased.

Regulations on the management of agrarian properties of the Treasury of the State introduced a ban on the lease of agricultural properties to foreigners until January 1, 1995. In some specific, justified cases, the property can be leased with the permission of the Minister of Agriculture. This is an important barrier for foreign investment in agriculture in Poland.

Under certain circumstances, the Agency may not require the lessee to pay rent for the property. Rent is not paid for class IV arable land. Rent is also not paid for the first three years of the lease if the land was idle for at least one year before the agreement was signed. Rent may also be waived for a period of not longer than five years in cases that are justified by the condition of the leased assets, provided the lessee fulfills the conditions specified in the agreement.

### **Additional Requirements**

The GOP should remove the ban on foreigners leasing agrarian real estate. The purchase of land by foreigners is almost impossible, as the Ministry of Interior and the Ministry of Agriculture must approve the sale, and this is done only in very rare cases. These regulations are a significant obstacle for foreign investment in Poland. The GOP is fearful that large portions of Poland will be owned by foreigners. The GOP must decide if it is serious about attracting foreign capital for investment, and, if it is, the GOP must provide opportunities for this to occur, either through long-term leases or sales of real estate.

The Agricultural Property Agency must hasten the process of assuming PGR assets, as well as hasten the process to dispose of these. There is little demand to purchase land from the Agricultural Property Agency. Procedures should be simplified if a company established by former employees is interested in leasing or purchasing land. Initial financial deposits should be minimal. Prices for assets and land should be based on what potential investors are prepared to pay for them, and not based on the value of a rye that could be grown on the land. Assets should not have to be purchased to access land, and investors should have the option to use the land for alternative purposes.

Unwanted ancillary assets, particularly apartments and social infrastructure, are a problem. Workers of the State Farms do not want to purchase the housing even for a symbolic fee, and the *gminas* do not want to take it over for fear of paying for its maintenance. Housing can be given free of charge to the former workers of the State Farms for use. At the least this would shift responsibility for its maintenance from the GOP to the owners. Other unwanted social property should be given to *gminas*, also free of charge. In the case of farmland and other real estate for which there are no buyers, this should be available in the form of a long-term lease for a very small fee, with an option to purchase, to persons who will make an obligation to make specific investments or create a specified number of places of work.

## POLISH CONTRACT LAW

### Civil Code

The Civil Code is the basic element of Polish law. This legal act was recently updated, and it will require additional changes as the new legal and civil system and institutions develop. The expansive development of the system of collateral security for property is planned.

The Civil Code regulates mutual relationships between legal and natural persons. The Civil Code guarantees the freedom of concluding agreements. Some agreements are named and defined, and, according to the existing general principle of the Civil Code, parties are permitted to create new types of agreements and contracts not presently defined. These are called unnamed agreements. They are legally allowed provided that they do not violate general regulations of civil and other laws.

### Arbitration in Economic Activity

There are great advantages to resolving disputes through arbitration proceedings rather than using state courts when the disputes pertain to economic activity. The arbitration procedure guarantees that the mediation of the dispute will be conducted by a panel with expertise in the area that is to be mediated. For example, an arbitration court resolving disputes in agrarian production will be created at a local association of agrarian producers. These people are better versed in the specifics of these matters than the state court. An arbitration court does not have to strictly adhere to the legal regulations governing a state court, and it can make its decisions based on standard practice.

The parties of the dispute will decide who will resolve the case, and so they can select persons whom they fully trust. The proceedings are faster, less formal, and less costly. It is possible to initially specify the rules to resolve the dispute, and this can be important for foreign companies that do not know local laws. For instance, it is possible to apply rules from other countries that govern these activities if both parties agree. Arbitration proceedings, that are called the conciliatory court, are regulated in Poland by the Civil Procedure Code, article 695.

According to current regulations, the execution of a decision of an arbitration court in Poland is subject to state court review. After the arbitration court gives its decision, one of the parties of the dispute must submit the decision to a state court. The state court must review and decide on the enforceability of the decision. One of the parties must also submit an application to the court to receive an enforceability clause on the decision. The second application is considered by the court after the enforceability of the arbitration court's decision becomes legally valid. It is possible to appeal on the issue of enforceability, and the whole procedure may be used by a party dissatisfied with the arbitration court's decision. This can delay the execution of the decision.

The state court may deny the enforceability of the arbitration court's decision only in a situation when this decision is "a breach of formalities or social rules." The state court limits its review to the contents of the decision of the conciliatory court and the content of the agreement. It does not investigate other issues. It does not consider the formalities regarding the arbitration proceedings, nor the correctness of the decision.

This regulation is the primary reason for the fact that arbitration has no practical use. Its value is in its ability to avoid the state court system, thereby resolving conflicts more quickly. Even if the

debtor agrees with the decision of the arbitration court, the recognition procedures for its decision must be performed by a state court, thereby unavoidably lengthening the process.

### **Additional Requirements**

Arbitration proceedings are much more inexpensive and effective methods of resolving disputes in business activity than are state court proceedings. It is necessary to support and develop this form of mediation. Arbitration requires support in the form of personnel training and elaboration of arbitration court statutes and proceedings (for permanent and "ad hoc" arbitration courts.) Changes should be made in the civil law procedure to eliminate the process of enforceability of arbitration decisions by the state courts, unless this is because of a violation of civil procedure.

## **LEASE LAW**

Leasing is one method of financing an investment or transaction. An investment here means acquiring the use of a particular object. Leasing can be used to finance an investment (a lease/purchase arrangement) or an installment sale (ownership is transferred at the beginning of the lease). It enables the implementation of a project without long-term capital investments. The costs of using the machines or equipment are financed from the current revenues of the company that the company earns by using these objects.

From the legal standpoint, leasing is an unnamed contract, not listed in the Civil Code. The current rental contract is the closest to this. ("The lessor makes an obligation to grant the lessee the use of the object, for a defined or undefined period of time. The lessee makes an obligation to pay a set amount of rent to the lessor.") The difference between rental and leasing is that leasing is a form of financing (credit) a business project. A leasing contract allows one to lease (rent) an object under specified conditions. The owner of this object is still the lessor, and the lessee has the obligation to use it properly, maintain it, insure it, and so forth. The lessee usually has the possibility to extend the contract, purchase the object under specified conditions after the contract expires, or exercise his priority right to purchase or take over the object free of charge.

Leasing enables the lessee to quickly take advantage of modern technologies with a very small investment, as well as limiting the need for long-term capital to do so. This can drastically increase the company's liquidity, as the investments are financed with the company's short-term cash resources.

From the standpoint of a company that uses it, leasing is similar to long-term credit, but it has several advantages. The lease payments are adapted to the company's projected profits, which will be the result of using the leased object. The lessee repays the leasing credit in installments of a fixed amount. The leasing credit equals the price of the object plus interest.

### **Types of Leasing**

There are several types of leasing. Direct leasing occurs when the lessor is the producer of the object that is being leased. Indirect leasing occurs when the lessor is the company that finances the transaction. The leasing company purchases the object of the lease from its producer.

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In financial leasing, the lessor finances only the purchase of the object of the transaction, and transfers all guarantee rights, insurance, warranty, and so forth, to the lessee. The lessee is also burdened with the risk related to the use of the given object. Such transactions are mainly for unusual, specialized equipment, which cannot be leased to many clients. This leasing is based on contracts that cannot be terminated before their expiry date, and which assume full amortization (depreciation) of the object in the contract period.

Operational leasing is used for objects that can be leased to many clients. The contract periods are not long, and the possibility exists to terminate the contract before the expiry date, but after a specified, obligatory period of use. The lessor makes a profit on this type of activity usually only after a number of transactions of operational leasing. The lessor assumes the costs of servicing and maintaining the object, and the cost is included either in leasing payments, or in a separate contract for service and maintenance.

### **Taxation Issues**

The Ministry of Finance has interpreted leasing for tax purposes. One interpretation involves the purchase of the item, with payment in installments or on credit, with a restriction on the ownership of the object sold. This regards contracts in which the parties decide on an ownership option. This means that the object of the contract becomes the property of the lessee after the fulfillment of contract conditions (for example, after the payment of the last installment, or purchase for a symbolic amount.) This type of leasing is considered an investment purchase and it is financed from revenues. It cannot be deducted as an expense, as Polish tax law has no deductions for investment purposes. This is one example of the general problem of the lack of tax incentives for investments.

In the case where the object remains the property of the lessor and the lessee pays installments for the usage of the object, the payments can be considered the cost of earning income and be included as part of the company's costs, and these costs are tax deductible.

### **Additional Requirements**

The Civil Code does not describe a lease contract in detail. According to the principle of contract freedom, such a contract can be entered into by the interested parties. The lack of a standard contract causes problems for the courts and tax offices when deciding detailed legal and taxation issues because of the lack of experience with these contracts. Approved standard lease contracts should be developed, along with revisions in the tax code.

## **COLLATERAL LAW**

Under the command economy, the main entities of economic activity were state enterprises, and capital trade between them was very small. There was not a need for securing claims. In a market economy, trade in capital is the basis for its functioning. There is no central registry for collateral in Poland. This causes problems for SME development because creditors cannot easily provide financing with the assurance that their risk will be protected. It is necessary to create or re-institute the system of securing obligations.

The system requires several key features. It should be easy to establish a form of security or collateral. The collateral should be centrally registered so other creditors can verify claims. There should be a timely and effective method to enforce collateral execution, at the same time limiting the use of the property that has been pledged to the creditor until the time the claim is executed.

## **Guarantees**

There are two types of guarantees under the Polish legal system, personal and property. In the case of a personal guarantee, the fulfillment of the obligation is guaranteed by a general charge on the property of the person who guarantees the obligation. In the case of a property guarantee, there is a charge against a particular object to secure the guarantee (movable property or real estate.)

The Civil Code governs the pledging of personal collateral. Under a guarantee, the guarantor makes an obligation to satisfy the claims in the case when the debtor fails to do so. The guarantor is responsible for fulfilling claims with his property in the same way as the debtor. Strengthening the collateral means increasing the value of property from which the creditor may seek to satisfy his claims.

When using a promissory note, the debtor makes an obligation to pay a specified amount of money to the owner of the promissory note (it is also possible to issue a promissory note for an unspecified amount.) The creditor may use a simplified procedure to have his claim recognized as collectable by a state court. The judge, during a closed session, issues an order to pay, without trial or summoning the debtor to court. The debtor has a limited opportunity to contest the order. Within a week from delivery of this decision, the order becomes a court sentence, and is to be executed immediately.

A guaranteed note requires a person who is neither the issuer, nor the person who is to satisfy the claim (drawee), to pay the debt on the same basis as the issuer of the promissory note.

A bank guarantee is one that is similar to the civil guarantee. In this case, the bank guarantees the payment of the debt.

In the case of a property guarantee, the creditor has more protection than with a personal guarantee. He can satisfy his claims regardless of whose property the object of collateral has become, and his claims will be satisfied over the claims of anyone else. There are two basic types of property guarantees. A lien encumbers movable property. Therefore it is necessary to pass this property on to the creditor or a third party. The debtor has no right to use the encumbered object. The lien may secure the repayment of one debt. If there are a number of debts secured by the collateral, then the creditor must be the same person. The object of the lien can also be rights, such as shares in companies, securities, bonds, and so forth.

A mortgage is an encumbrance of real estate, therefore there is no need to pass the property on to the creditor. The real estate remains the property of the debtor, which poses no threat to the creditor, as the creditor can control the legal status of the collateral through the system of the mortgage register. Real estate can be encumbered with a number of claims by different creditors.

## **Other Forms of Collateral**

It is possible to use other forms of collateral if they do not breach the existing rules of the law. This is consistent with the rule of freedom of contracts. Transfers of debt, participation in debt, transfer

of ownership as collateral (expropriation on collateral), and payments of deposit can all be used as collateral.

### **Collateral Claims**

Companies involved in economic activity need access to financing in order to develop, and their own resources are insufficient to finance this. Lenders have financing, but they want to minimize their risk. This can be accomplished through collateral. Lenders are not able, though, to verify whether the borrower has already secured financing through another institution (the system of interbank exchange of information on borrowers is only being created and will be available for banks only), nor whether the person applying for financing has already pledged the asset as collateral.

This is one reason why banks demand such high collateral coverage. Banks often require collateral coverage in excess of the value of the loan. The types of collateral most often demanded are liens on real estate (mortgages), guaranties of another bank or an appropriate amount of money in a bank account. With liens on movable property, real collateral coverage can be achieved only when the lender actually receives the asset. For example, the transfer of ownership is not secure, as the borrower still owns the lienee asset and (if he is dishonest) can use it again for collateral.

The Banking Law Act of January 31, 1989, maintained favorable legal solutions for state banks, and for those banks that commenced their operations before this law came into force. At that time there were state banks, cooperative banks, the state cooperative bank (Food Economy Bank), and the Łódzki Bank Rozwoju (Łódź Development Bank), with the participation of private capital. These banks have preferences because the State Treasury guaranties the obligations of these banks.

When the borrower does not pay his debt on time, the bank may request that a court officer collect the obligation without referring the matter to court. Bank documents stating that the debt is overdue and collection procedures have been initiated are considered execution orders for court executive officers. A compulsory mortgage may also be used in relation to the debtor's real estate, even if the credit contract did not contain such a clause.

### **Proposed New Collateral Law**

A draft of the law on securing claims developed by the IRIS project proposes establishing a charge on several types of collateral. One includes any kind of property, including real estate and movable assets, defined as far as identity of any kind are concerned. Another is property rights including perpetual usufruct and nonproprietary rights. The last is a claim on existing and future property.

The National Bank of Poland (NBP) and Ministry of Justice Commission for Reform of the Civil Code had jointly decided that there is a need to introduce a new law on securing claims. It would be added as an amendment to the Civil Code. Because of the civil and legal character on the protection of claims and its connection to obligations, it would be necessary to locate the law on securing claims within the Civil Code as a real right (in rem). A decision concerning this issue should be made before drafting of the law begins.

The new law creates a wide range of possibilities to identify sources of financing for enterprises, for example, a lien on (future) expected property. It also establishes a central, easily accessible registry of collateral. A provision to quickly establish a procedure for securing claims is also important. The

draft creates the possibility to transfer abroad money against collateral claims established in Poland by foreign companies. This could encourage foreign banks and businesses to cooperate with Polish enterprises as the transfer will not require a separate foreign currency transfer permit.

### **Additional Requirements**

It is necessary to create a central, easily accessible registry of collateral that covers all participants. A system that allows the owner of the collateral to use the lienee property, and at the same time provides the lender with a guarantee of securing his risk must be developed.

## **COMPETITIVE BIDDING**

Polish law regulates several issues pertaining to competitive bidding. It has rules to organize bidding for the sale of fixed assets by state enterprises, as well as the conditions to cancel the sale. The law regulates bidding for real estate belonging to the State Treasury or *gmina*. It defines the sale of real estate that is part of the stock of the Agricultural Property Agency, conditions for financing the purchase in installments, and the estimated price of land. It organizes bidding under the geological and mining law. These rules are an integral part of the GOP's efforts to privatize SOEs and PGRs.

### **Competitive Bidding for Sale of State-Owned Enterprise Assets**

There are specific rules for organizing the competitive bidding for the sale of fixed assets by state enterprises. The owner of the fixed assets (state enterprise) must announce an oral auction or bid by tender. A bidding committee must be created. Organization of the bidding may be commissioned to other entities. The fixed assets that are to be sold have to be valued based on market prices (defined as the average price of the asset in the region of sale) and, optionally, by expert opinions. Prices of the assets to be sold should be equal to their market price. If the market price cannot be determined, the price cannot be lower than the book value, after revaluation and depreciation.

The opening bid price cannot be lower than three-fourths of the price determined based on the above formula. The announcement of the bidding has to be published with an appropriate notice period in a daily newspaper and posted at the office of the seller. Persons participating in the bidding must provide a deposit in the amount of 10 percent prior to the bidding. These regulations constitute an important limitation on selling assets of state enterprises, as these initial prices are often too high for potential buyers.

There are several cases when a state enterprise may sell its fixed assets without bidding. One instance is when the assets for sale have been valued at the market price, and it is obvious that a higher price cannot be obtained. A second instance exists if the object of the sale is property components, whose value (after revaluation and amortization) does not exceed the amount determined in the regulations on considering property components as fixed assets. If the objects of sale are property components transferred as a contribution to a company based on the Commercial Code in which the seller is a participant, then bidding can be bypassed. Lastly, bidding can be eliminated if bidding already took place, and the assets could not be sold at the opening price.

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### **Competitive Bidding for Real Estate Owned by the State Treasury**

Competitive bidding for real estate that belongs to the State Treasury or the *gmina* is regulated by the Decree of the Minister of Spatial Economy and Construction of June 19, 1991. The owner of the property (State Treasury or *gmina*) organizes bidding in the form of an open oral auction, or bidding by tender, either in an unlimited bid process, or one that is open to selected persons or entities. The State Treasury is represented by the appropriate regional government office, and the *gmina* by its board.

To participate in the bid, one must pay a deposit equivalent to no less than 5 percent of the opening bid price. Foreign nationals can participate in bidding for the purchase or perpetual usufruct of land if they have the approval of the Minister of Internal Affairs. The bidding announcement is posted at the office of the owner of the real estate. It is also printed in a daily newspaper, or otherwise published in a manner commonly used in a given region/city, at least two weeks prior to the bidding. The public oral auction is valid regardless of the number of participants, provided that at least one participant offers a price higher than 1 percent above the starting price. The purpose of the bidding is to obtain the highest price possible.

An unlimited bidding by tender is organized to choose the best bid offered. The announcement must state that the owner of the property has the right to select the best tender, or to decide that the bidding did not bring the expected result. The interested parties submit their tenders at a time and place specified in the announcement, pay the deposit, and comply with additional conditions of the tender. The open part of the bidding is held at a time and place stated in the announcement, with all the tenderers present. The committee verifies the proper organization of the bidding, announces the number of tenders received, controls the payment of deposits, and opens the tenders and qualifies them for the closed part of the bidding. The committee rejects those tenders that do not comply with formal or merit conditions of the bidding. The closed part of the bidding consists of a detailed analysis of the tenders and the selection of the best one.

Bidding by tender open only to a selected number of persons or entities is organized when the conditions of the bidding can be met only by a limited number of persons. It is organized based on rules similar to the unlimited bidding by tender, with several differences. The announcement states that the bidding is open only to persons who can meet the prequalification, and the announcement states what these are. The submitted tenders are prequalified for bidding by the bid committee, and the number of qualified tenderers cannot be less than two. The deposit is paid by tenderers qualified for the bidding.

### **Additional Requirements**

Regulations regarding bidding should facilitate the sale of assets. Because preference is given to companies formed by former employees, the bidding process should be waived if newly organized employee companies choose to purchase SOE or PGR assets. The formula for determining asset value should be closer to the market value of the assets, that is, the price the market is willing to pay. Establishing artificially high asset values leaves assets in the possession of the GOP. Valuation of the assets based on book value or replacement value does not reflect the market value of the assets, and many of them are not sold. The necessity to obtain a price at least 1 percent higher than the opening bid price (in case of sale of real estate) should be abolished.

## TAX LAW

### Turnover Tax

There are two groups that are subject to turnover tax. The first group is socialized economic units. This includes state enterprises, enterprises created by state enterprises, or an organization of cooperatives with the participation of foreign capital, foreign legal entities acting in Poland on the basis of intergovernmental agreements, banks, cooperatives, and limited liability and joint stock companies with participation by the State Treasury in excess of 50 percent.

The taxable base is the turnover, which is defined as revenues from the sale of products and services. The basic rates for the sale of products are set at 20 percent, for the sale of services at 5 percent and for trade at 1 percent to 5 percent. Detailed rates are defined in tables and vary from 0 percent to 68 percent. Exemptions from turnover tax for this group are applied to insurance companies, banks (the purchase and sale of foreign currencies are taxable), and housing cooperatives.

In addition, this group is exempt from turnover tax on all export sales of products and services (with the exception of coal and fuels), on the sale of subsidized products and services, on the sale of military products, on the sale of plant and animal production (not industrially processed), and on social welfare activity and vocational and scientific training courses.

Turnover tax does not have to be paid on sales of products for investment purposes — for example, some equipment as determined in the law, generally for production purposes. Items of individual use, such as cars, furniture, and electric home appliances, have turnover tax. In the field of agriculture, exemptions are applied to sales of agricultural field products, agricultural equipment and machinery, fertilizers, and fodder.

The second group subject to turnover tax is individuals and legal persons other than socialized economic units and other persons without a legal entity. The taxable base is the turnover, defined as amounts due for the sale of services and products. The general rate for production activity is 20 percent, for services 5 percent and for trade 5 percent.

Tax exempted activities for this group are on sales of products and services for export, as well as for investment purposes. There are also some less important exemptions for activities in the field of social welfare, culture, artistic craftsmanship, and so forth. Sale of an enterprise is exempted from turnover tax. In agriculture turnover tax is not applied in the case of the sale of plant and animal farm products that are not industrially processed, and when a constant place of sale is not maintained. There is no turnover tax for agricultural equipment and machinery, fertilizers, fodder, and agricultural field products.

### Income Tax

There are two separate sets of acts concerning income tax. One of them regulates issues of income tax for legal persons. This includes entities previously included under socialized economic units. The second is for individuals.

There is a corporate income tax for legal persons. The taxable base for this tax is profit, that is defined as the difference between revenue and the costs to obtain this revenue. The corporate income

tax rate is 40 percent. There are some tax exemptions on income obtained from agricultural economic activity. Agricultural activity is described as animal and plant production, vegetable production (open, greenhouse, and plastic tunnel), flower production, fruit growing, breeding material production, animal farm production, and fish production.

Income tax is applied, however, to special branches of agricultural production (highly efficient agricultural production). These include production in heated greenhouses and plastic tunnels, production of mushrooms, fur-bearing animals, poultry, and so forth. Food processing is taxable under the income tax law.

Profits received from the sale of farms are tax free. Profits from nonagricultural activities of agricultural production cooperatives are tax free under the condition that this profit is destined for salaries of members.

The deduction of some business expenses is allowed. These include depreciation, damage to assets, expenditures for research and development, interest on liabilities, and payroll.

There are no general income tax investment incentives under Polish Law. Only the foreign investment law allows companies with foreign capital participation to apply for exemptions from income tax if the contributions of the foreign party to the company's share capital exceed the equivalent of two million ECU, and the activity of the company is conducted in regions with high levels of unemployment, or the activities introduce new technologies or the activities enable the company to export goods and services that comprise at least 20 percent of the value of the total sales.

Income tax for individuals is applied to all individuals with income from sources listed in the law on personal income tax. The taxable base is net income — the difference between the sum of receipts (in cash and in kind) and any income-related expenses. Tax rates are set between 20 percent to 40 percent. In the case of small-scale economic activity (not exceeding 120 million zloties a year), a lump sum rate of between 7 percent to 10 percent may be applied.

In the field of agricultural activity, tax exemptions are generally the same as those that apply to legal persons. In addition, the sale of industrially processed animal and plant products by farmers obtained from their own farms is free from tax. This applies only to basic processing. Tax deductions for individuals in agriculture are also similar to deductions for legal persons.

### **Income Tax for Using State Property**

State enterprises are obliged to pay a dividend, which is a tax on profit after income tax for using state property. The rate of this tax is established every year in the budget. In 1991 it was 22 percent. State farms are taxed at 25 percent of the standard rate.

### **Tax on Increase of Salaries (Popiwiek)**

A tax on an increase in salaries, popiwiek, is generally applied to state enterprises and other state units conducting economic activity, and other legal persons with state participation in excess of 50 percent. Cooperatives are subject to this tax when the value of the share fund is lower than 20 percent of the reserve fund. The tax is levied on the amount of a salary that exceeds a basic tax free amount described by the law.

### **Agricultural Tax**

The law on Agricultural Tax addresses taxes on land for agricultural purposes. The taxable base is agricultural land that is larger than one hectare, and is owned or possessed by individuals, legal entities, or state companies. Excluded from the tax are areas used for special branches of agricultural production and areas located near lakes, rivers, preserves, lands under management by the Enterprises of State Forests, and fields of members of agricultural production cooperatives.

The taxable base is based on the conversion hectare. It is calculated according to the location of the land, the class of the land (from I to VI), and the kind of land (arable land, pastures and meadows). The tax rate is 2.5 quintals of rye from 1 conversion hectare, calculated on the basis of the current official price of rye. This price is published every 3 to 6 months in the gazette Monitor Polski.

### **Local Taxes and Revenue Duties**

The law on local taxes and fees establishes the tax on real estate, transportation, dogs and local fees, such as fair space and other administrative and local fees. Article 7 exempts farm buildings used for agricultural production from real estate taxation. The Law for Revenue Fees defines the object of the fee and its value. The fee is applied when submitting applications, certificates, and other legal deeds — a sale or purchase contract, company agreement, and the like. The value of the fee is described in the executive act to the law.

### **Additional Requirements**

The GOP must develop tax incentives under the income tax regulations for investment and development in the agroindustry sector. The tax code should be revised and simplified so that it can be understood by taxpayers, and is not punitive to those making investments in industries that have potential for export employment. Revisions should include investment incentives, and these should remain in effect for a sufficient time to provide stability to the business planning process.

## **PACT FOR PRIVATE SECTOR DEVELOPMENT POLICY AND LEGISLATIVE REFORM**

Much of the legal and regulatory review in this report focused either on laws that govern the functioning of command economy structures (cooperative law), access to and restrictions on the use of state-owned property (lease or purchase of SOE and PGR land and assets), and the lack or inadequacy of the legal and regulatory system in place to enable the efficient functioning of private businesses and civil law procedures to resolve contractual disputes arising between businesses (mortgage registration, land registration and integration, arbitration, lease financing, loan collateral, bankruptcy, and taxation).

The GOP's "Pact on State Enterprise" (Appendix 17.13), "Chances for the Countryside in Agriculture" (Appendix 17.3), and "Outlines for Socio-Economical Policy for the Year 1993" (Appendix 17.12) are examples of government efforts to create comprehensive sector and economic policies. All of these include provision for social safety net subsidies and privileges for select target groups, as well

as government interventions in the marketplace. Many of these continue to protect inefficient state companies to the detriment of competitive market and private sector development, sending distorted signals to the business community that retard new business investment in open markets and promising economic sectors.

In its Pact for State Enterprises, the GOP undertook a comprehensive review of the laws, policies, and regulations that were in place regarding SOE operations and their present economic and financial status, and developed and revised legislation to address the situation of SOEs in the present economy. The GOP should develop a similar pact for private sector development under competitive market conditions. GEMINI fosters an enabling process to accomplish this objective within the framework of policy formation familiar to the GOP. This framework may be viewed to be the Pact for Private Sector Development Policy and Legislative Reform. Thus GEMINI recommends that the GOP create an overall framework that expresses the GOP's understanding of the need to formally advocate, under the law, private sector driven competitive market development based on a policy formation and negotiation process that includes specific input from, and nationwide support for, business policy and law initiatives by private sector organizations.

The Pact should include new and revised legislation that supports free market and private sector development by removing impediments to and reducing the costs of business transactions to establish a level playing field for all businesses in the marketplace, be they private or state owned. The Pact would be based on a complete and systematic legal review of legislation and regulations that are currently in place that govern and affect private sector business activities, as well as identifying gaps in policy, law, and regulation needed to sustain a level playing field in industry and commerce. Recommendations for changes in financing mechanisms, investment incentives, taxation, and trade and commerce regulations should be supported by sound economic impact analyses.

The Pact would identify the need for the GOP to establish an advocacy office for the private sector within the government to carry out the legal and economic analyses required, including provisions for collaboration with relevant ministries to resolve policy and regulatory problems and foster ongoing dialogue with the private sector constituency. The Pact for Private Sector Development Policy and Legislative Reform should establish the policy framework leading to the preparation and passage of a Small Business Act. The Act would include provision for establishing an apolitical Office of SME Advocacy within the Council of Ministers. GEMINI recommends that the advocacy office report to the Prime Minister or an Interministerial Committee.

If the latter, one minister should serve as the Chairperson of the Committee to whom the Director of the Office of SME Advocacy would report. The Director, the Chief Legal Counsel, and the Chief Economist in the proposed SME advocacy office should not be elected members of government, and should be allowed considerable autonomy in carrying out its program to create and sustain an environment conducive to competitive market and private sector development in Poland.

**ANNEX F**

**GOVERNMENT AND INSTITUTIONAL DOCUMENTS  
(Translations from Polish)**

**GOVERNMENT PROGRAM  
CHANCES FOR THE COUNTRYSIDE AND AGRICULTURE**

**Contents:**

- I. Principles of the Government Policy**
- II. General Time Frame of the Government's Actions**
- III. Legislative and Organizational Work  
Deadlines and Persons Responsible for the Implementation**

**The Council of Ministers**

**September 1992**

## **I. Principles of the Government Policy**

*The change of the economic conditions of agrarian production, which occurred as a result of the introduction of the new economic system, is the reason why the state has to formulate new rules for its policy towards the agriculture and the countryside. The discontinuation of subsidies, new rules for management, bringing the prices of agrarian products up to market values, allowing competitive products from foreign countries to enter Polish market — all this significantly decreased the profitability of agrarian production. The government recognizes the social meaning of these facts; takes into consideration that agriculture employees 27% of professionally active people; and that 28% of the citizens of the Republic of Poland live in rural areas. The government does take into consideration the social situation of the countryside and the specific character of agrarian production — therefore it declares its will to introduce evolutionary changes in this area.*

*It is the intention of the government to assist the transformations of agrarian production, whose goal would be lowering its costs to a level where farming becomes profitable, while maintaining a stable situation on the food market. Work on a farm cannot be treated worse than the work of industrial workers or employees of other sectors of the economy.*

*The government will attempt to effectively utilize the funds designated for the improvement of situation in the countryside. It intends to support financially the activities for the improvement of living and working conditions and its multifunctional development. This means the necessity to expand the programs related to infrastructure — water supply, sewage treatment and telecommunications. The government perceives the need for such shaping of changes, that the decreased employment in agriculture is not accompanied by rapid migration from rural areas to the cities. It is the intention of the government to support the creation of new work places in the countryside outside agriculture; balancing the level of education; and adapting the health care system to the specific character of the Polish countryside.*

*Striving for the improvement of the effectiveness of Polish agriculture, the government will enable the farmers to participate — on favorable conditions — in the privatization of enterprises working in the agricultural environment.*

*Methods of intervention on the agriculture market should go towards such expending of money from the poor budget that the economic success of a farm depends first on the farmer himself, then on the community activities, and only in the last place on the activities of the government. At the same time, as inflation goes down and so do the interest rates on credits for agriculture, the budget resources should be gradually moved from subsidies for credits to the support of investments in the rural areas.*

## **II. General Time Frame for the Government's Activities**

Due to the draught which led to a serious decrease in crops this year, and also in the revenues of agrarian producers, the efforts of the state will be targeted at partial balancing of its results and making it possible to recover the level of production in the following year. The actions were approved by the Council of Ministers on September 8, 1992. Restructuring work will be delayed as a result of the need to alleviate the effects of the drought.

The strategy for the development of agriculture, designed by the Ministry of Agriculture and Food Economy, will be presented to the Economic Committee of the Council of Ministers in October 1992. The package will contain proposals for the methods of support of the changes of agrarian structure

of the country and the proposals for the work of the Agricultural Restructuring Debt Reduction Fund, for the modernization of agrarian production and food processing.

### **III. Legislative and Organizational Work -- Deadlines and persons responsible for implementation**

#### **The creation of rules for the protection of Polish agrarian producers**

##### **III.1. Defining the scope of the state's guaranties to agrarian producers**

A stable system of state intervention in the agriculture market and of support for the agrarian producers will be put in place. The system will take into consideration the consequences of Poland's affiliation with the EC and other international agreements, including the outcome of negotiations with the World Bank, IMF and the GATT regulations.

The Ministry of Agriculture, together with the Ministry of Foreign Cooperation, will prepare proposals of concrete solutions and will present it to the Economic Council by October 30, 1992.

##### **III.2. Minimal prices**

The government will rationalize the systemic solutions regarding agrarian intervention, based on the following rules:

Bread grains (wheat, rye) will be included in the system of minimal prices. A separate mechanism will regulate minimal prices for milk. These prices will guarantee permanent perspectives of profitability for effective producers.

The minimal prices will be protected by the interventions of the Agricultural Market Agency in the grain and milk markets.

The level of the minimal price will be negotiated with the representatives of trade unions of farmers, in the Council of AMA, taking into consideration the scope of resources granted to the Agency under the budget law, and the resources it already has.

Another factor for establishing the minimal prices for these three products will be their import prices.

Introduction of this concept will institutionalize the intervention activities of the Agency, and will not be a threat for market mechanisms.

The Ministry of Agriculture will present current rules for the introduction and calculation of minimal prices by October 30, 1992.

State reserves of agrarian and food products will be restored to a sensible level.

The president of the AMA, in cooperation with the Minister of Agriculture, Minister of National Defense and Minister of Internal Affairs will present proposals for the appropriate actions by October 31, 1992.

### **III.3. Agency of Agricultural Markets**

The government, recognizing the need for the adaptation of the AAM to current situation in agriculture and in the food market, as well as to its tasks under the new program of agrarian policy, will present a complex proposal for the amendment of the act on the Agency of Agricultural Markets.

### **III.4. Introduction of supplementary payments**

The government sees the need of elaborating solutions for the protection of the internal market and the interests of the Polish agriculture and food economy. An especially important instrument for the control of import and binding the prices of imported goods to prices of domestic production should be supplementary payments. They would also be an additional source for the financing of state intervention policy in agriculture.

Under the current Customs Law, as an anti-dumping policy, additional special payments will be imposed on certain goods, aside from standard customs tariffs, in order to protect the economic interests of domestic producers.

The Minister of Agriculture and Minister of Finance, working together with the Minister of Foreign Cooperation, will present detailed proposals for supplementary payments and other mechanism of market protection by October 30, 1992.

### **Creation of favorable credit conditions for agriculture**

#### **III.5. Definition of stable forms for credit preferences**

Until the time the inflation processes have calmed down, it is necessary to use preferential credits for the purchase of production inputs and credits for the purchase of crops, in order to achieve an interest rate which would be adapted to the production cycle. The budget expenditures should be moved more into investment. This regards both credits for farming and for investments in the area infrastructure of the countryside.

The Debt Restructuring Fund will be transformed into Agriculture Credit Agency, which will be supporting modernization processes, mostly in the field of production and processing of milk, meat, vegetables and fruit, as well as the purchase of land for farming purposes. Special attention will be given to projects which will create new places of employment in the countryside.

The Ministries: of Agriculture and of Finance will prepare jointly the draft of Act on the Agriculture Credit Agency, by December 15, 1992.

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### **III.6 Restructuring of the banks**

The process of debt reduction and restructuring of all enterprises in agriculture and food processing will utilize the possibilities which will be the result of the new act on the financial restructuring of enterprises and banks and on the resources of the Agriculture Debt Reduction Fund. This will be related to the restructuring of the banking sector, which services the country and agriculture. These functions are performed by the Food Economy Bank and cooperative banks.

In November 1992 the Council of Ministers will take a resolution which will enable the first stage of the FEB restructuring by transforming it into a company in which the shares will be owned by the State and cooperative banks.

The Ministry of Finance will present, by October 31, 1992, a draft of an act enabling the restructuring of the Food Economy Bank, to be considered by the Council of Ministers.

The Ministers of Agriculture and of Finance will present the possibility of using the act on debt reduction and the Agriculture Debt Reduction Fund to solve the problem of solving the problem of debt of the State Farms, by November 1992.

### **III.7 Verification of the rules of financing land drainage works and subsidies for mineral fertilizers**

Resources for the land drainage should be limited to the maintenance of existing facilities, and the participation of farmers in the maintenance of specific installations should be increased. Land drainage which takes into consideration full regulation of water supply relations will still be supported from budget resources.

The Ministry of Agriculture and Food Economy will present proposals for rationalizing the system of subsidies for land drainage through the introduction of state and farmers' participation in its costs, by October 30, 1992.

The Ministry of Agriculture and Food Economy will present by October 15, 1992 an analysis for the system of subsidies for mineral fertilizers and proposals regarding the coordination of supplying the farmers with mineral fertilizers from the industry and from local sources.

### **Improvement of living and working conditions and development of education in the countryside**

#### **III.8 Subsidies for the works on infrastructure improvement**

A proposal of the Ministry of Agriculture and MoF is necessary, regarding the subsidies and credits for projects meant to improve living and working conditions in the countryside and the construction of technical infrastructure: water supply, sewage treatment plants, telephone network, local trash dumps and roads.

The Ministry of Agriculture, working with the Central Planning Committee, will prepare a preliminary long-term project for the financing of infrastructure in the countryside — by December 15, 1992 — and the project of concrete target solutions — by June 30, 1993.

### **III.9 Adapting the health care system to the needs of the countryside**

The Ministry of Health and Social Care will prepare proposals for activities whose goal is the improvement of health care system in the countryside by the end of 1992.

### **III.10 Reducing the educational differences between the city and the countryside**

The government intends to maintain the existing educational network until the time the primary schools are fully transferred to the gmina's responsibility. The government will also make all efforts not to allow the deepening of differences in the material situation of the city and rural schools.

The agricultural sciences will be directed by a council of agricultural research, whose task will be the coordination of the subjects of scientific work, adapting it to the current needs and supervision over the process of implementation of the results of the research into practice.

The Ministry of National Education shall prepare a proposal for permanent activities of the Ministry which will strive to balance the educational chances and possibilities of children in the countryside and in cities, by November 30, 1992.

### **Transformation of state farms**

### **III.11 New privatization procedures for the PGRs**

Privatization of land belonging to the State Treasury will go in the direction of the increase and creation of new family farms as the basis for new agriculture system in Poland. Their development will be supported by policy of prices, taxes, credits, protection of internal market and social policy.

The creation of large farms should be prevented. In the interim period the medium- and long-term lease will be used for the ex-state farms and the land of the National Land Fund; and in necessary cases - temporary administration of farms belonging to the State Treasury.

Some farms involved in plant or animal breeding, or experimental/research/training farms will remain the property of the State.

The Minister of Agriculture, working together with the President of the Agricultural Property Agency, will modify the appropriate privatization procedures and present the draft of amendment for the Act on the Management of Agricultural Real Estate by November 15, 1992.

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### **III.12 Acceleration of the work of the State Agricultural Property Agency**

The President of the State Agricultural Property Agency will present a schedule for the accelerated work of the Agency, due to the decision of the Parliament dated June 6, 1992. The schedule will be presented to the Economic Committee of the Council of Ministers in October 1992.

### **Participation of farmers in the privatization of the agricultural environment**

#### **III.13 Privatization of the agricultural environment**

Privatization will be accompanied by economic and organizational restructuring of enterprises from the food and farm products processing industry.

A system will be introduced for preferential participation of agrarian producers in the privatization of state enterprises with which they have permanent relations. Employees and agrarian producers will be given equal representation in the board of the enterprise, they will have equal rights when applying for its privatization. Farmers will have similar rights to those of the employees when leasing the enterprise's assets in part or in whole.

Shares will be offered first to farmers. Privatization of food and agrarian product processing companies will be done in a manner which will protect from domination of capital which could limit the agrarian production or lead to technological backwardness of the company.

The Minister of Agriculture, in conjunction with the Minister of Privatization, will present a list of enterprises for sectoral privatization according to the above rule before November 30, 1992.

The Ministry of Agriculture and the Ministry of Privatization will present proposals regarding the program of privatization of the food processing industry. The proposals will be discussed by the Economic Committee of the Council of Ministers in October 1992.

#### **III.14 Re-creation of rural cooperatives**

The government will try to create the conditions for the re-creation and development of authentic farmers' cooperatives. Favorable conditions: legal, organizational and economic will be guaranteed for the restructuring of existing cooperatives and the creation of new ones in the agriculture sector.

The Ministry of Finance, together with the Ministry of Agriculture, will prepare proposals for changes by December 15, 1992.

The Council of Ministers will present its position regarding the draft of the new cooperative law, which is being prepared by a Parliament committee.

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## **Various issues**

### **III.15 Ecological farming**

The Ministry of Agriculture and the Ministry of Environment Conservation will prepare a preliminary concept for the development of ecological farming, by the end of December 1992; and a full version of the plan by June 30, 1993.

### **III.16 Introduction of agricultural fuel**

One of the elements of support for agrarian production is the possibility of using cheaper fuel by the farmers — in the first stage this will be done by the return of part of the turnover tax, and in the second by the return of part of the excise tax. This will limit the costs of production, which are out of the farmers' control, and can make some impact on the relative lowering of food costs.

### **III.17 Agricultural chambers**

Recognizing the need to develop professional self-governing associations in the countryside, the government will participate in the creation of the act on Agricultural Chambers, which will regulate the participation of the whole rural communities in solving the problems of the country and agriculture.

The Ministry of Agriculture will present proposals of the solutions by December 15, 1992.

### **III.18 Rationalization of the usage of marginal agrarian land**

A strategic choice of the task of agrarian production in the national economy will be made. The marginal agrarian land, remaining in the possession of the State Treasury, will be designated for forestation or construction, especially housing.

The Minister of Agriculture and Food Economy, working together with the Minister of Environment Conservation and the Minister of Construction will present the criteria for separating the marginal land by December 15, 1992.

**ACT OF PARLIAMENT  
DATED JUNE 1, 1990  
ON THE CREATION OF THE AGENCY OF  
AGRICULTURAL MARKETING**

**(Journal of Laws 39/90, item 538)**

**Act of Parliament  
dated June 1, 1990  
on the creation of the Agency of Agricultural Markets**

- Art. 1.1. A state organizational entity is being created, under the name of Agency of Agricultural Markets, hereinafter called the Agency.
- 1.2. The Agency is subordinate to the Prime Minister.
- Art. 2.1. The Agency is a legal person.
- 2.2. The Agency is not responsible for the obligations of the State Treasury.
- 2.3. The State Treasury is not responsible for the obligations of the Agency.
- Art. 3. The Agency is located in Warsaw.
- Art. 4.1. The Agency serves for the implementation of State intervention policy for agriculture, whose goal is to stabilize the market of agrarian products and protection of revenues earned in agriculture.
- 4.2. The Agency implements this task mainly by:
- 1) intervention purchase of agrarian products and, in particularly justified cases, import of products, agrarian semi-products and food articles;
  - 2) intervention sale of agrarian products and their processed products on domestic and foreign markets;
  - 3) establishing reserves of agrarian products and processed products.
- 4.3. The scope of the Agency's activities includes also:
- 1) analysis of the agrarian and food market, defining the tendencies of development of agrarian production, its market conditions, as well as organizing a system of fast information in this area;
  - 2) in cases justified by the situation in agriculture and agrarian market, formulating organizational and legal proposals for the government regarding the agrarian market, intervention prices of agrarian products, regulations regarding foreign trade, as well as other intervention methods of shaping supply and demand. These proposals should pertain to those agrarian markets which are the subject of the Agency's activities;
  - 3) the possibility of issuing credit guaranties.
- Art. 5.1. The Agency shall take over from the Main Direction of State Reserves the state reserves of agriculture products, semi-products and food products, as well as financial resources designated for this purpose under the budget law.

- 5.2. The Minister of Domestic Market, acting in conjunction with the Minister of Finance and the Minister of Agriculture and Food Economy, shall define the detailed rules, scope and manners for the transfer of the state reserves and financial resources, described in 5.1.
- 5.3. The Agency shall take over, free of charge, grain storage warehouses, with total capacity 1 million tones, which are managed by the grain and milling enterprises, PZZ (State Grain Enterprises).
- 5.4. The Minister of Agriculture and Food Economy, in conjunction with the concerned founding bodies of the State Grain Enterprises (PZZ) shall define the rules and manners for the transfer of the grain warehouses, discussed in 5.3.
- Art. 6.1. The Agency is managed by the President, who is appointed and recalled by the Prime Ministers.
- 6.2. The President of the Agency is its executive and managing body.
- 6.3. The duties of the President of the Agency include, specifically:
- 1) organizing the implementation of the Agency's tasks, which are described in article 4;
  - 2) representing the Agency in all outside contacts;
  - 3) undertaking activities which are meant to guarantee the development and effective use of the Agency's activities;
  - 4) submitting for the approval of the Council of Ministers proposals prepared by the Board of the Agency, concerning the prices which will be used for the intervention trade.
- 6.4. The President of the Agency submits quarterly reports on the activities of the Agency to the Prime Minister, the Minister of Agriculture and Food Economy, and to the Parliamentary Committee of Agriculture and Food Economy.
- Art. 7.1. The counsel and advisory body to the President of the Agency is the Board of the Agency, composed of the chairman and 20 members.
- 7.2. The Chairman of the Board is elected and recalled by the Board of the Agency.
- 7.3. The members of the Board who are representatives of the organizations of agrarian producers (8 persons), producers in the sector of agrarian and food processing, trade and consumers are appointed and recalled by the Prime Minister, at the request of the appropriate bodies of the interested organizations.
- 7.4. The members of the Board who are representatives of state administration, including two representatives of the Minister of Agriculture and Food Economy, and one representative each from the Ministry of Finance, of Domestic Market and of Foreign Cooperation, are appointed and recalled by the Prime Minister, at the request of the interested Ministers.

- Art. 8. The detailed organization of the Agency is defined by its statute, approved by the Prime Minister after consultations with the Parliamentary Committee of Agriculture and Food Economy. The subject scope of the Agency's activities shall be defined by the Council of Ministers.
- Art. 9. The revenues of the Agency are: budget subsidies, income from economic activity, trade in securities and other revenues.
- Art. 10.1. The Agency manages its financed according to the provisions of the budget law pertaining to budget entities.
- 10.2. The Council of Ministers, taking into consideration the special type of the Agency's activities, shall adapt the rules, described in 10.1., to the condition of the Agency's work, and especially the rules of obtaining subsidies from the state budget.
- 10.3. The Agency retains all surplus of financial resources for purposes described in Art. 4.1.
- Art. 11. The system of remuneration for the employees of the Agency is specified by the Council of Ministers by way of decree.
- Art. 12. The technical and organizational services to the President of the Agency are provided by the Office of the Agency.
- Art. 13. This Act comes into force on the day of promulgation.

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**Act**  
**Dated July 13, 1990**  
**on the Privatization of State-Owned Enterprises**

**(Journal of Laws 51/90, item 298)**

**Act**  
**Dated July 13, 1990**  
**on the Privatization of State-Owned Enterprises**  
**(Journal of Laws 51/90, Item 298)**

**Chapter 1      General provisions**

- Art. 1. Privatization of a state-owned enterprise means giving third parties access to shares or participation in companies with the sole ownership of the State Treasury, which were created after transformation of the enterprise, giving third parties access to the assets of the enterprise or the sale of the enterprise. For these purposes, a state-owned enterprise may be transformed into a company or liquidated according to rules specified in this act.
- Art. 2.1. At the motion of the Council of Ministers the Sejm establishes annually the basic directions of privatization and defines the usage of resources earned in the course of these activities. The decisions are taken by the Sejm together with the voting on the budget act.
- 2.2. The Council of Ministers, by way of decree, defines the state enterprises which have particular importance for the economy of the state and whose privatization requires the approval of the Council of Ministers.
- Art. 3. The provisions of the act on the statute, shares, share capital, board of directors and general assembly are used respectively in relation to the contract, shares, (.....), board of directors and general assembly of partners of a limited liability company.
- Art. 4. Any time this act speaks of:
- 1) <sup>1</sup>
  - 2) making shares available — this means especially sale of shares, sale of rights resulting from shareholding, encumbrance of the shares or their lease,
  - 3) organized part of the assets of the state-owned enterprise — this means such group of material and nonmaterial elements which can constitute a separate entity, and specifically a workshop, store, or service workshop.

**Chapter 2.      Transformation of a state enterprise into a company**

- Art. 5.1. The Minister of Privatization may transform a state-owned enterprise into a company:
1. At a joint motion of the director and employees' board of the enterprise, submitted after consultations with the general assembly of employees and with the founding body,

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<sup>1</sup> Provision deleted by Act dated June 14, 1991 on companies with foreign participation (Journal of Laws 60/91, item 253).

2. At the motion of the founding body, submitted with the approval of the director and employees' board of the enterprise, after consultation with the general assembly of the employees.
- 5.2 The motion, mentioned in par. 1, should contain: the financial and economic evaluation of the enterprise, draft of the founding document of the company under the Commercial Code, and the proposed scope of preferences for the employees of the enterprise who will be purchasing shares in the company from the State Treasury.
  - 5.3. The Minister of Privatization can refuse the transformation of the state enterprise into a company due to the financial and economic situation of the enterprise or important interest of the state.
  - 5.4. The refusal to transform the state enterprise into a company should be given within three months from the date of submission of the motion and should contain, aside from the justification, a list of conditions whose fulfillment would enable the transformation of the enterprise; or the date in which the issue of transformation could be considered again. It is possible to contest this refusal in the manner specified in article 61 of the act on state-owned enterprises, dated September 25, 1981.
- Art. 6.1. The Prime Minister, at the motion of the Minister of Privatization, can decree the transformation of a state-owned enterprise into a company. In this case the provisions of article 5 do not apply.
  - 6.2. The Minister of Privatization submits the motion after consulting with the director and employees board of the enterprise and with its founding body. Lack of opinion within one month means that no protests were voiced regarding the project.
  - 6.3. All activities related to privatization are performed by the Minister of Privatization.
- Art. 7. The company created as a result of the transformation of a state-owned enterprise is governed by the provisions of the Commercial Code, unless the act specifies otherwise.
- Art. 8.1. The company created by way of transformation of a SOE remains the single-person company of the State Treasury until the time shares are made available to third parties.
  - 8.2. A company created as a result of transformation of SOE receives all the rights and obligations of the transformed SOE.
  - 8.3. The company receives, by force of the act, the rights and obligations of the transformed enterprise which are the result of administrative decisions.
- Art. 9.1. Employees of the transformed enterprise become employees of the company, with the restriction of par. 2 below.

- 9.2. The employment contract of the employee expires on the day the enterprise is deleted from the register of SOEs. The expiry of contract has the same legal effect as dissolving of the employment contract through recall. The employee is hired by the company under conditions negotiated by the parties.
- 9.3. The director of the transformed SOE receives no severance pay if the director is employed as member of management of the company created after the transformation of the SOE.
- 9.4. The company is responsible for obligations resulting from work contracts, which occurred before the transformation of the enterprise.
- Art. 10. The statute of the company created as a result of privatization of a SOE is defined by the Minister of Privatization, on behalf of the State Treasury.
- Art. 11. The closing balance of the SOE becomes the opening balance of the company. The sum of the establishment fund and enterprise fund becomes the capital of the new company. The statute of the company defines the part of the capital which creates the share capital and reserve capital.
- Art. 12.1. The management of the company, immediately after the statute is decided, submits a motion for entering the company in the trade register.
- 12.2. The transformed state enterprise is deleted from the register of SOEs at the time the new company is entered into the trade register.
- Art. 13. Companies created through transformation of state-owned enterprises, in which the State Treasury has a majority of shares, are governed by the provisions of article 14 to 16.
- Art. 14.1. Until the time shares in the company are made available to third parties, the company's activities are governed by general rules regarding the accounting of state-owned enterprises, taking into account the provisions of the Commercial Code.
- 14.2. The Minister of Finance, by way of decree, can establish special rules of accounting for such companies, taking into account the provisions of the Commercial Code.
- Art. 15.1. The management of the company publishes a verified annual financial statement and the calculation of gains and losses in a newspaper, within two weeks from the date of verification.
- 15.2. The announcement should contain the name of the body or entity which performed the verification.
- Art. 16. A company created in accordance with the act can be a single-person founder of a joint stock company.
- Art. 17.1. In private companies, created by way of transformation of a state-owned enterprise, a supervisory board is established. The employees of the company elect one-third of the supervisory board.

- 17.2. The provisions of the company's statute on the election of the supervisory board by the employees cannot be revoked or waived in a period when over one-half of the shares remain in the possession of the State Treasury, unless the majority of the members of the supervisory board who were selected by the employees approve such action.
- 17.3. For the protection of work relations of the employees of the company elected for the supervisory board regulations regarding the protection of members of employees' councils in SOEs apply.
- 17.4. The election of members of the supervisory board by voting in separate groups (art. 379, par. 3-5 of the Commercial Code) can apply only to this part of the board which is not elected by the employees.

**Chapter 3 Making shares available to third parties**

- Art. 18.1. The sale and encumbrance of shares belonging to the State Treasury in companies created on the basis of transformation of a state-owned enterprise, and also taking possession of shares of such companies if the State Treasury is the only shareholder, is done on the basis of the Commercial Code, unless the provisions of this chapter state otherwise.
- 18.2. The transfer of shares without payment requires the consent of the Council of Ministers.
- Art. 19.1. The availability of shares belonging to the State Treasury is decided by the Minister of Privatization. Making all shares available to third parties should occur within two years from the date the company is entered into the trade register, unless the Council of Ministers sets a later date.
- 19.2. The increase of the share capital, through issue of shares, in a single-person company of the State Treasury is decided by the Minister of Privatization.
- Art. 20. Before shares are made available to third parties, the Minister of Privatization rules the performance of a financial and economic analysis of the company in order to establish its value and the necessity of introducing organizational, technical or economic changes.
- 20.2. The Minister of Privatization may waive the necessity of performing the economic analysis if the valuation of the enterprise was performed before its transformation, and the shares are made available directly after the transformation.
- 20.3. The Minister of Privatization orders the performing of analysis for the purpose of establishing the legal status of the assets of the enterprise and company, specifically focusing on any claims of third parties to these assets.
- 20.4. The Minister of Privatization, by way of decree, shall define the manner of performing the analyses, their financing and the qualifications required from persons who will be performing the analyses.

- Art. 21. The Minister of Privatization can make the availability of shares dependent on the introduction in the enterprise and company the changes mentioned in art. 20.1.
- Art. 22.1. Before shares are made available to third parties, the Minister of Privatization, with the consent of Minister of Finance, may, on behalf of the State Treasury, take over free of charge part or all of the company's debts.
- 22.2. The Minister of Privatization informs of his intent to take over the debts of the company, in a manner appropriate for the announcements of the company, calling all creditors to state their claims no later than two months since the date of the announcement.
- 22.3. The creditors who within the time specified above do not agree for the takeover of their debts, should be satisfied before the debts of the company are taken over. The takeover of the company's debts is announced by the Minister of Privatization in a manner appropriate for the announcements of the company.
- Art. 23.1. With the reservation of provisions of art.24, shares belonging to the State Treasury are made available to third parties in the following manner:
- 1) through bidding,
  - 2) on the basis of a public offer,
  - 3) as a result of negotiations which resulted from a public invitation.
- 23.2. In special cases the Council of Ministers may, at the request of the Minister of Privatization, allow a different, other than described in 23.1., mode for the disposing of shares belonging to the State Treasury.
- 23.3. Disposal of rights of shares belonging to the State Treasury in a manner different than described in 23.1. without the consent defined in 23.2. is invalid.
- 23.4. The Minister of Privatization, in conjunction with the Minister of Finance, by way of decree, defines the rules of financing of the disposal of State Treasury shares in companies created after the transformation of state enterprises.
- Art. 24.1. Employees of a state enterprise transformed into a company have right to preferential purchase of up to 20 percent of the overall amount of shares of this company belonging to the State Treasury. The employees retain the right to purchase and take over further shares under general rules.
- 24.2. Making shares available to the employees under preferential rules should occur no later than 2 months from making the first batch of shares available under general rules.
- 24.3. The right of employees to purchase shares under preferential rules expires after one year since the date the shares were made available to employees.
- 24.4. Shares disposed of on preferential basis are sold to the employees at a price lower by a half than the price set for individual persons, Polish citizens, offered on the first day of sale. This price cannot be changed in the period defined in par. 3.

- 24.5. The joint value of discounts for employees of the SOE transformed into a company cannot exceed the product (ratio) of the average value of wages paid in the state economy sector for one employee within 12 months preceding the entry of the company into the trade register and the number of employees purchasing the shares.
- 24.6. The number of shares sold on preferential conditions to particular groups of employees, the conditions and dates for the payment shall be defined by the statute of the company, taking into consideration the motion discussed in article 5.
- 24.7. The preferential purchase of shares of the company may also be used by agrarian producers who have permanent relations with the enterprise through cooperation or contract.
- 24.8. The Council of Ministers shall define types of enterprises whose shares may be purchased under conditions of 24.7.
- Art. 25.1. The Parliament, at the motion of the Council of Ministers, makes decisions on the issue and value of privatization bonds which can be used to pay for:
- 1) purchase of rights on shares which were created through the privatization of state enterprises,
  - 2) purchase of participation rights in financial institutions (societies of joint investments), which are in possession of shares created through the privatization of state enterprises,
  - 3) purchase of enterprises or organized portions of assets of state enterprises, discussed in art. 37.
- 25.2. The privatization bonds, issued on the basis of par. 1 are allocated free of charge in equal amounts to all citizens of the Republic of Poland, who are permanent Polish residents.
- 25.3. The Council of Ministers, by way of decree, defines the validity terms of bonds, their form, rules for their dissemination and usage, as well as rules for limiting or prohibiting the sale of bonds.
- Art. 26. The Council of Ministers, by way of decree, may decide that some issues of the bonds, described in art. 25, will be made available on credit conditions.
- Art. 27. Payment for shares purchased from the State Treasury may also be done, on the basis of separate regulations, in the form of securities.
- 27.2. The Council of Ministers, at the motion of Minister of Privatization, by way of decree defines the requisite form of payment for shares purchased from the State Treasury.
- 27.3. The Minister of Privatization, with the approval of Minister of Finance, may allow Polish citizens who purchase shares, to pay for them in installments.

- Art. 28.1. The Minister of Privatization hands over shares to a bank or to another financial institution, under rules defined in contract, if rights to these shares were not taken over within three months from the date the shares were made available.
- 28.2. The bank or other financial institution executes, according to the contract, rights resulting from the ownership of the shares it received. The revenues are handed over to the State Treasury.
- Art. 29. Domestic legal persons cannot, without the consent of the Minister of Finance, purchase rights of shares belonging to State Treasury.
- Art. 30. The provisions of this chapter apply also to the transfer of rights on shares and taking over shares in a company, whose sole shareholder is a company owned solely by the State Treasury.

**Art.31 to 36 were revoked on the basis of the act on companies with foreign participation.**

**Chapter 4 Privatization of a state-owned enterprise through liquidation.**

- Art. 37.1. The founding body, with the consent of the Minister of Privatization, may liquidate a state-owned enterprise in order to:
- 1) sell the enterprise or organized portions of its assets,
  - 2) bring the enterprise or organized portions of its assets as a contribution into a company,
  - 3) lease, for a definite period of time, the whole enterprise or an organized portion of its assets.
- 37.2. The liquidation decision is taken by the founding body on its own initiative or at the motion of the employees' council of the enterprise.
- 37.3. The director of the enterprise and the employees' council may protest the decision described in par. 2, in a manner defined in article 61 of the act mentioned in art. 5 par. 4.
- Art. 38.1. Liquidation in order to lease the assets of the enterprise, mentioned in art. 37.1 p. 3, may occur when:
- 1) the proposal of liquidation and lease was decided by the employees' council after requesting the opinion of the general assembly of employees (delegates);
  - 2) the assets are leased to a company;
  - 3) the majority of employees of the liquidated company participate in the company;

- 4) the partners are only individual persons, unless the Minister of Privatization decides otherwise;
  - 5) the amount of share or enterprise capital will not be lower than 20 percent of the total value of the creation fund and the fund of the liquidated enterprise.
- 38.2. Liquidation in order to lease may occur without fulfilling the conditions listed in par. 1 point 3, if the company which fulfills the conditions is not created within two months from the date the employees' council approves the motion on liquidation or when the general assembly of employees approves it.
- Art. 39.1. The lease is done on the basis of a contract signed on behalf of the State Treasury by the founding body.
- 39.2. In the contract, described in par. 1, the parties may decide that after the time for which the contract was signed, expires, the lessee has the right to purchase the assets he leases. At the time of establishing the price, the value of lease payments must be taken into consideration.
- 39.3. The Minister of Finance shall define the rules for setting payment for the lease of assets belonging to State Treasury, discussed in par. 1 and 2.
- Art. 40. In the event of liquidation of a state-owned enterprise on the basis of the act on state-owned enterprises the founding body, on behalf of the State Treasury, may:
- 1) bring the assets remaining after the liquidation of the SOE into a company as its contribution, in part or in whole;
  - 2) sell the assets remaining after the liquidation of the SOE in part or in whole.
- Art. 41. The assets of the liquidated state-owned enterprise or organized portions of the assets are sold or leased by the founding body, on the basis of provisions of articles 23, 26, and 39.3.
- Art. 42. The single-person companies of the State Treasury, created on the basis of article 37.1. p. 2 and article 40 p. 1, as well as the sale of shares in such companies, are governed by the appropriate provisions of chapters 2 and 3.
- Art. 43. The sale of an organized portion of the assets of a SOE is governed by appropriate provisions on the sale of the enterprise.

**Chapter 5 Special and interim provisions**

- Art. 44. The notary office collects its standard fees for any notary activities related to the transformation of a state-owned enterprise into a company. The amount of the fee is defined by the Minister of Justice by way of decree.
- Art. 45.1. The provisions of this act apply to the privatization of communal enterprises, with the restrictions contained in par. 2 and 3.

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- 45.2. The competencies of the Minister of Privatization and of the founding body in relation to a privatized communal enterprise are performed by the board of the gmina or association of gminas.
- 45.3. The gmina or associations of gminas can, on the basis of agreement with the Minister of Privatization, transfer the activities related to the privatization of a communal enterprise to this Minister. The agreement requires a decision of the gmina or association of gminas.
- Art. 46. Provisions revoked by force of act on companies with foreign participation.
- Art. 47. The Council of Ministers, within two months from the date this act comes into force, shall present to the Sejm the motion discussed in art. 2.1, for the year 1990.
- Art. 48. The Decree of the President of the Republic of Poland dated June 27, 1934 — the Commercial Code (Journal of Laws No. 57 item 502; 1946/57, item 321; 1950/34, item 312; 1964/16, item 94; 1969/13, item 95; 1988/41, item 326; 1990/17, item 98) is changed in the following manner:
- 1) in article 207, after the words "employees of the company" the following words are added, "holding the position of chief accountant, legal advisor, director of a unit or others who are directly subordinate to members of the board,"
  - 2) in article 378 after the words "employees of the company" the following words are added, "holding the position of chief accountant, legal advisor, director of a unit or others who are directly subordinate to members of the board."
- Art. 49.1. The act dated September 25, 1981, on state enterprises (Journal of Laws 1987/35, item 201; 1989/10, item 57 and No.20, item 107; 1990/17, item 99) the following changes are introduced:
- 1) after article 25.2 article 25.3 is added, in the following wording:
 

"Art. 25.3. The liquidation of a state enterprise on the basis of the act on state-owned enterprises is performed in agreement with the Minister of Privatization,"
  - 2) article 29 is revoked,
  - 3) in article 30:
    - a) in par. 1 the words, "and the mode of liquidation of a state enterprise for the purpose of establishing a company," are deleted,
    - b) in par. 2 following the words "after the liquidation of a state-owned enterprise" a comma is added and the words, "including also liquidation on the basis of the act on privatization of state-owned enterprises,"
  - 4) in article 46, after the words "founding body" the following words are added, "according to the act dated July 13, 1990 on the privatization of state-owned enterprises (Journal of Laws 51, item 298)."

49.2. The unfinished liquidation procedure of a state-owned enterprise, commenced on the basis of article 29 of the act dated September 25, 1981 on state-owned enterprises, are continued on the basis of this act.

Art. 50. In the act dated December 28, 1989 on the special ways of dissolving employment contracts for reasons regarding the enterprise; and on the changes of some laws (Journal of Laws 1990/4, item 19 and Nr. 10 item 59) the following changes are introduced:

1) in article 8 paragraph 3 receives the following wording:

"3. Severance pay cannot be paid to an employee who:

- a) entitled to a single-time severance payment related to retirement or disabled pension,
- b) before the date of dissolving the employment contract accepted an offer of employment in a company taking over the enterprise or in an enterprise created as a result of such takeover,
- c) after the dissolving of the employment contract is starting economic activity in his own name, or under a company or cooperative, taking over portions of rolling or fixed assets of the enterprise. This regards also an employee who at the time of dissolving the employment contract is a partner in the company or member of the cooperative which performs this takeover,"

2) article 14 is revoked.

Art. 51. This act comes into force on the day of promulgation.

**POLISH-AMERICAN ENTERPRISE FUND**

**Investment and Loans  
Designated for the Development  
of Private Business in Poland**

**Warsaw, Poland  
Nowy Świat 6/12 Street  
tel. 625-19-21, 625-20-17, fax: 625-79-33**

## **POLISH-AMERICAN ENTERPRISE FUND INVESTING IN THE FUTURE**

### **A Program for Entrepreneurial People**

The idea of the Polish-American Enterprise Fund was formulated by President George Bush during his visit in Poland in July 1989.

The Enterprise Fund is a private institution, managed by an independent Board of Directors. The Statute of the Fund grants it the right to receive money from the U.S. Government and to freely dispose of the money under the guidelines and recommendations defined by the U.S. Congress. We hope that the available financial resources will bring measurable investment results.

The basic goal of the Polish-American Enterprise Fund is to support the development of small and medium private enterprises. This goal is implemented by the Fund through loans and capital investments, as well as financing training in the area of finances, marketing, organization, and management.

When making investment decisions, the Fund takes into consideration the success chances for a given project. The activity of the Fund is managed according to the legal regulations of Poland and the United States, rights of men and employees, protection of natural environment and it also takes into account the influence on the employment and economic conditions in Poland.

### **Credit Program: Up to 500 000 U.S. Dollars**

On the basis of agreement with the Polish-American Enterprise Fund, in the beginning of 1991 selected Polish banks have started the granting of foreign currency loans in U.S. dollars. The money for the loans comes from the resources of the Fund and is designated for the support of the **private sector** in Poland.

After a year of fruitful cooperation, the Fund extended these activities by, among others, increasing the maximum loan amount to USD 500,000.

The Polish-American Enterprise Fund and its corporations, Enterprise Credit Corporation (ECC) and Polish-American Enterprise Venture Capital Corporation (PAEVCC) are American organizations, whose goal is to support the development of the Polish private sector and to implement in Poland such manners for business activity, which proved successful to American entrepreneurs.

Because of the limited resources available for our program, of all the many enterprises applying for a loan, only those that are able to demonstrate their future success and prove the repayment of the requested loan amount will be taken into consideration at the review of loan applications. Among them, **only the best ones** will receive the loan. The application review process is **very selective**.

## **Who Are the Loans Designated For? — Potential Borrowers**

The loans are available primarily to private businesses already in existence and, secondly, to individuals or private companies who intend to commence business activity.

Applications for loans that will be used for location and speculative purposes will not be considered at all, nor will be applications for any activity related to the production of weapons or abortion. Similarly, applications from enterprises that are already indebted will not be considered; nor applications for debt refinancing, if this is the sole purpose of the loan. Enterprises that are commencing their activity will undergo much stricter evaluation procedures. The experience of the applicant and the amount of his own resources that he wishes to invest in the project will be particularly important.

Households and partnerships can apply only for one loan under our program. The PAEF loan must be repaid before any other loans for the contributions of family members or friends.

The Fund shall carefully analyze all submitted applications. This analysis can also include a visit to the company of the applicant or verification of the proposed collateral for loan repayment.

Machines and equipment purchased with the loan must be serviceable in Poland and, in the case of purchase of new equipment, they must have full warranty.

Applications for the financing of transportation vehicles, machines, and/or equipment should contain copies of agreements or contracts that confirm the possibility and scale of their use. Profits obtained from the activity should be sufficient to cover the liabilities resulting from the incurred loan.

If the borrower does not repay his loan (does not comply with the requirements of the loan contract), the PAEF will claim its rights and receivables through court proceedings.

The process of evaluation of applications can appear complicated, but it is based on the best American model, which allows for an accurate evaluation of the applicant's credit ability. This process can have educational values, even for those applicants who do not receive the loan, as it will allow them to rethink certain aspects of their current or planned business activity.

The success of a business in market economy is determined by many factors: good ideas, hard work, high quality of goods and services provided, amount of capital, good reputation — these are just a few. Through the loan program, the PAEF makes American resources available to Polish companies seeking capital. While repaying the loan, the Polish companies and entrepreneurs gain valuable experience and prove their creditworthiness. Thanks to this, they also guarantee the continuation of the program, as the repaid money is made available to other enterprises, which helps develop the Polish private sector and market economy.

## **Loan Conditions**

### **\* LOAN AMOUNT**

The loans are granted up to the amount of US \$500,000 for one business, and repaid together with all liabilities that result from the loan contract, in the same currency.

\* **INTEREST RATE**

The interest rate on the loans is fixed for the whole loan period. The amount of the interest is decided by the Loan Committee. There is also a one-time commitment fee, in the amount of 0.5 percent of the loan amount.

\* **REPAYMENT PERIOD**

It is assumed that the repayment period should not exceed three years, and the grace period, in which interest is repaid, should not be longer than one year.

\* **FORM OF THE LOAN**

The money of the loan is used in a noncash manner, i.e., payment of bills and invoices.

\* **COLLATERAL**

The following types of collateral are used:

- a) blank promissory note,
- b) contract on the transfer of ownership of designated objects,
- c) transfer of an insurance policy,
- d) bank guarantee,
- e) mortgage,
- f) personal guarantee.

For a given loan, a different set of collateral may be used (one or a number of the above listed).

**Investment Projects**

Aside from the loan program, the Fund proposes also capital cooperation. This cooperation includes medium-sized and large investment projects. Just as in the case of the loan program, these projects must demonstrate good profitability and development perspectives.

Especially favorable treatment is given to those projects, which aside from their high profitability, allow for modernization of production, lowering costs, quality improvement, and production of new goods, as well as providing not only faster development but also better use of local labor resources and raw materials.

Joint investment projects mean that the partners are ready to participate in project costs and bear the risk jointly.

Proposals for joint ventures should be presented in the form of a business plan. Aside from the information on applicants, and especially their property and financial standing, education and professional experience, such plan should contain a detailed project description, discussing the issues of marketing, technology, organization, and finance.

The management should have extensive experience in the area of the project. The project should be in the preparatory stage, which will allow for appropriate evaluation of its basic elements — including costs of construction, modernization, equipment, raw materials, and their sources, the necessary labor force, channels and cost of distribution, and the amount of the necessary turnover capital.

Marketing analysis should include the evaluation of market absorption rate for a given product or service, client description and their expected requirements, advantages of the product as compared to competition, and the analysis of existing and potential domestic and foreign competition.

The proposals should present development perspectives for the project, and demonstrate real chances of return of the invested capital. Thus, the business plan, aside from presenting the financial situation of the company within the last three years, should also include financial proposals for assets and liabilities, costs and revenues and cash flow projections for the nearest future. The submitted proposals are analyzed, according to the standards used in market economy countries, verified from the standpoint of data credibility and the merits of the proposal. This process requires the cooperation of the person who submitted the project, and an in-depth analysis of the investment officers of the Fund.

The investment officer gives his opinion on the submitted proposal. If his opinion after the analysis is positive, the proposal is presented to the Investment Committee of the Fund. After the proposal is approved, the Fund and the applicants enter into a notary contract of the joint venture, which details the conditions of the mutual cooperation.

**TECHNOSERVE  
ENTERPRISE PROMOTION  
AND SUPPORT CENTER**

**Sandomierz, 9 Zamkowa Street**

## **TECHNOSERVE ENTERPRISE PROMOTION AND SUPPORT CENTER**

TECHNOSERVE is an American organization targeted at assistance to people living in rural areas in different parts of the world, so that they can improve their social and economic conditions through the creation of their own enterprises. Within the 24 years of its existence, TECHNOSERVE has gained extensive experience in establishing new enterprises in many countries.

In 1991, thanks to the funds of U.S. Agency for International Development and private American foundations, TECHNOSERVE has established in Sandomierz the Enterprise Promotion and Support Center. The center cooperates with farmers from the Tarnobrzeg voivodship, in order to improve their economic situation in various areas, such as agrarian production, processing, marketing, and distribution. The Center also provides advisory services in the areas of agrotechnologies, banking, and finance management. It organizes market studies and assists with the establishment of an enterprise.

The Enterprise Promotion and Support Center will cooperate with persons interested in the establishment of new enterprises or the improvement of existing ones, related to the agricultural sector. The Center assists with the creation of new work places and new sources of income in our region.

The Center provides the following services:

1. Feasibility studies, demonstrating general ratios of cash flow, incomes and expenditures, and capital requirements.
2. Analysis of existing enterprises, demonstrating their strengths and weaknesses.
3. Technical consulting.
4. Consulting in the areas of planning and introduction of accounting and financial control systems.
5. Consulting on sources of financing.
6. Consulting on agrarian production and breeding.
7. Consulting on administrative issues, accountancy, and so forth.
8. Consulting on marketing, distribution, and management.
9. Assistance with privatization processes.

The Enterprise Promotion and Support Center employs specialists in the following areas:

1. Fruit and vegetable processing: Romuald Osypiuk,  
Bernard Ziolo

- |                             |                            |
|-----------------------------|----------------------------|
| 2. Meat processing:         | Marta Toś,<br>Stefan Broda |
| 3. Dairy production:        | Piotr Korpysz              |
| 4. Marketing:               | Romuald Osypiuk            |
| 5. Agrarian production:     | Bernard Ziolo              |
| 6. Accountancy and finance: | Peace Corps Volunteer      |

The Center cooperates with:

- Groups of farmers undertaking economic initiatives;
- Groups of entrepreneurs operating in the field of agrarian production;
- Existing enterprises seeking consulting assistance;
- Rural housewives and young people;
- Persons who wish to learn any of the areas in which the Center provides services.

The Center, depending on the needs of the client, offers two types of services:

- Short-term, regarding projects and advisory services for a specified period of time;
- Long-term, based on the cooperation with existing enterprises that need consulting assistance and newly created, privately owned enterprises.

In a case when the Center is not capable of providing the appropriate assistance, it gives the client information on which organizations or institutions should he apply to.

If you wish to establish cooperation, call us or send a letter to our office in Sandomierz. Include the description of your project or the areas in which you would like to receive assistance. The more information you provide, the quicker we will be able to evaluate your request. Please include your address and the name of contact person.

The Center charges fees for its services, but they are lower than the costs of providing them, and are set on a case-by-case basis.

**The Enterprise Promotion and Support Center does not issue credits; it only helps in their acquisition.**

Enterprise Promotion and Support Center  
27-600 Sandomierz  
9, Zamkowa street  
tel. 23920 fax 23360

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**LAW**

**of 19 October 1991**

**ON ADMINISTRATION OF  
AGRICULTURAL REAL ESTATE  
OF THE STATE TREASURY AND  
CHANGE TO SOME LAWS**

LAW  
of 19 October 1991  
on Administration of Agricultural Real Estate of the State  
Treasury and Change to Some Laws

Chapter 1

General Rules

Article 1. The Law regulates rules of administration of of the State Treasury assets in relation to:

- 1) agricultural real estate in the understanding of the Civil Code and other immovables located in areas designated in the spatial use plans for the purposes of the agricultural economy, further referred to as "real estate", excluding lands under the administration of the State Forests (Lasy Państwowe),
- 2) other immovables and components of assets of the State Treasury remaining after the liquidation of state farming enterprises and assumed by the State Treasury under other titles.

Article 2.1. The rules of administration apply to the following real estate:

- 1) in administration of State organizational entities,
- 2) in use or actual management by natural persons, legal persons or other organizational entities,
- 3) incorporated in the State Land Fund (Państwowy Fundusz Ziemi), as created on the basis of rules on conduct of the agricultural reform.

2. The rules of administration include also the real estate assumed for ownership by the State Treasury on the basis of administrative decisions or basis other titles.

Chapter 2

The Agricultural Property Agency of the State Treasury

Article 3.1. The Agricultural Property Agency of the State Treasury is created, further referred to as the "Agency". The Agency is a State legal entity.

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2. Supervision of the Agency is performed by the Minister of Agriculture and Food Economy.

Article 4. The seat of the Agency is the capital city of Warszawa.

Article 5. The State Treasury entrusts the Agency with the implementation of the ownership rights and other material rights on its behalf in relation to assets defined in Articles 1 and 2 following rules defined in the Law and in relation to real estate designated in the local spatial management plans for purposes not related to operating agricultural farms, nevertheless assumed by the Agency on the basis of Article 1, part 2 - on principles defined in rules on land management and expropriation of real estate.

Article 6. The Agency implements tasks, arising from State policy, in particular in the field of:

- 1) creation of conditions supporting rational use of the production potential of the Resource of the State Treasury,
- 2) restructuring and privatization of assets of the State Treasury used for agricultural purposes,
- 3) trade in real estate and other components of resources of the State Treasury used for agricultural purposes,
- 4) administration of assets resources of the State Treasury designated for agricultural purposes,
- 5) creation of agricultural farms,
- 6) securing assets of the State Treasury,
- 7) conduct of agricultural development projects on lands of the State Treasury and support for the organization of private farms on State Treasury lands,
- 8) creation of jobs in relation to restructuring of the State farms sector.

Article 7.1. The Agency acts on the basis of this Law and the Statute granted to it by decision of the President of the Council of Ministers.

2. The Statute of the Agency determines in particular: the organization of the Office of the President of the Agency, the creation of regional (field) branches, the principles of granting

plenipotentiary powers, the system of internal control and the rules of the Agency's financial system.

Article 8. An organ of the Agency is the President of the Agency.

Article 9.1. The President of the Agency is appointed and recalled by the President of the Council of Ministers on the basis of a proposal by the Minister of Agriculture and Food Economy in agreement with the Minister of Ownership Transformations.

2. The Agency is directed by the President who represents the Agency in public.

3. The President of the Agency presents an annual report to the Polish Parliament - the Sejm and a quarterly report of the Agency's activities to the Minister of Agriculture and Food Economy.

Article 10.1. An opinion giving and advisory organ to the President of the Agency is the Agency Council, composed of 9 members.

2. The members of the Agency Council are nominated for a period of 4 years by the Minister of Agriculture and Food Economy in agreement with the Minister of Ownership Transformations, the Minister of Finances and the Minister of Labor and Social Policy, after positive opinion by the proper Sejm Commissions.

3. The Chairman of the Council is elected and recalled by the Council from among its members.

Article 11. The Minister of Agriculture and Food Economy in agreement with the Minister of Finances will secure financial means to start the activities of the Agency.

### Chapter 3

#### The Resource of Agricultural Property of the State Treasury

Article 12.1. The assets of the State treasury, which are referred to in Articles 1 and 2, assumed basis this Law, constitute the Resource of Agricultural Property of the State Treasury, further referred to as the "Resource".

2. The Resource includes also the real estate purchased by the Agency on the basis of civil law contracts.

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3. The Agency manages and disposes the Resource following rules determined in the Law.

Article 13.1. The assumption by the Agency of the rights and obligations arising from the execution of the right of ownership in relation to assets which are referred to in Articles 1 and 2, will take place immediately after the creation of the Agency, no later however after than two years elapse.

2. The Agency assumes for management the components of assets of the State Treasury, basis rules defined in this Law, assuming the rights and obligations linked to them in relation to the State Treasury and third parties, with the reservation in part 3.

3. As of the moment the assets, referred to in Article 12, Part 1, are assumed by the Agency the obligation to pay the dividend ceases 1/.

Article 14.1. In relation to state farming enterprises the deletion of the enterprise from the register of state enterprises takes place on the day its founding organ takes the decision to liquidate the enterprise.

2. As of the moment of deletion from the register, the administration established on the State agricultural real estate and other immovables and assets components, as defined in Article 1, Part 2, is terminated.

3. The founding organ transfers to the Agency the assets and liabilities and obligations of the liquidated enterprise. The Agency appoints a provisional administrator of the enterprise assets.

4. The transfer which is referred to in Part 3, takes place in the way defined in Article 19.

5. The assets of the State Treasury assumed in the course as defined in Part 3, are administered by the Agency basis principles defined in Chapter 5.

6. The liquidation defined in parts 1-4 is not subject to Article 63 of the Law of 25 September 1981 on State Enterprises (Dziennik Ustaw z 1991 r. Nr 18, poz. 80; Nr 75, poz. 329 and Nr 101, poz. 444 - The Legal Journal of 1991, No. 18, Item 80, No. 75, Item 329 and No. 101, Item 444).

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1/ The dividend is an obligatory tax on fixed assets levied on state enterprises (translator's explanation).

Article 15.1. The decision to liquidate a state enterprise for the purpose of transferring to the Agency of the enterprise's assets is made by the founding organ:

- 1) of its own initiative.
- 2) basis a joint proposal by the director of the enterprise and the workers council.
- 3) basis a proposal by the Agency.

2. Liquidation basis the proposal by the Agency is obligatory.

3. The decision referred to in Part 1, Sections 1 and 2, is made with the acceptance of the Agency

4. The decision referred to in Part 1, Sections 1 and 2, is made after expression of opinion by the workers council.

Article 16.1. The State Treasury real estate used by cooperatives, natural persons as well as non-State organizational units, remains in their management on hitherto conditions until the making of new agreements with the Agency, as referred to in Chapters 6 and 8.

2. If the change of conditions of the hitherto use of real estate does not take place in the period specified in Article 13, Part 1, the hitherto use established on the basis of a contract or administrative decision expires.

3. The statement of expiration of the hitherto decisions and the transfer of the assets to the Resource takes place through the decision of the regional organ of general state administration, proper from the point of view of the location of the real estate.

4. The hitherto user is entitled to compensation for the components of the real estate and the unconsumed benefits, which will be assumed together with the real estate; this compensation will be determined on the basis of Article 30, Part 2.

Article 17.1. The transfer to the Agency of real estate of the State Land Fund (the Państwowy Fundusz Ziemi land bank) takes place through the decision of the wojewoda (regional governor).

2. The transfer, referred to in Part 1, may take place successively, in the period defined in Article 13, Part 1.

Article 18. As concerns the real estate assumed for the State Treasury on the basis of specific regulations, their transfer to the Agency takes place in a period no longer than 30 days from the

day of validation of the ruling or the decision of assumption by the State.

Article 19.1. The actual transfer of real estate, which is referred to in Article 14, Part 16, Article 16, Part 3 and Article 17 and Article 18, takes place in the form of a hand over-receival protocol, prepared by the subject transferring the assets and by the Agency.

2. The hand over-receival protocol includes a census in kind of the assumed real estate, together with its components and attachments, if these are assumed.

3. The census in kind is performed according to rules of accounting conduct.

4. As of the day of signing of the hand over-receival protocol, the benefits and liabilities linked to the assets transferred, occurring on the day of the signing of the protocol are transferred to the Agency.

#### Chapter 4

##### The Financial Economy of the Agency

Article 20.1. The Agency conducts its own autonomous financial economy.

2. The revenues of the Agency are:

- 1) revenues due as result of sales of State Treasury real estate,
- 2) payments due to administration title, tenancy rent and lease title,
- 3) profits made as result of administration of State Treasury assets,
- 4) other revenues.

3. The financial means of the Agency are earmarked for the realization of tasks defined in Article 6 and Article 13, part 2 and for the functioning of the Agency.

Article 21. The annual financial plan of the Agency and the directions of disposal of the financial means are determined by the President of the Agency in agreement with the Minister of Agriculture and Food Economy and the Minister of Finances.

Article 22.1. To fully cover its expenditures, the Agency may take short term credits.

2. Taking long term credits requires agreement of the Minister of Finances.

3. The Agency may with agreement of the Minister of Finances issue bonds.

Article 23. The Agency may offer credit guarantees, defined in the financial plan.

#### Chapter 5

#### The Management of the Agricultural Property Resource of the State

#### Treasury

Article 24.1. The Agency administers the Resource through:

- 1) sale of assets in whole or in part basis rules defined in Chapter 6,
- 2) leasing for a specified period of time against payment to legal and to natural persons basis rules defined in Chapter 8,
- 3) contributing assets in whole or part to a shareholding company,
- 4) giving for a specified period whole or part of assets to an administrator for management, on the basis of rules defined in Article 25,
- 5) turning over for administration.

2. The assets which have not been administered in ways defined in Part 1, are to be secured by the Agency or designated for other purposes in ways specified in the Statute of the Agency.

3. Agricultural land included into the Resource of the Agency may be idled in economically justified cases.

4. Upon proposal by the Agency, the regional Government administration organ, proper in view of the location of the real estate in question, may, basis its decision, transfer free of charge to the State Forests real estate included in the Resource, for the purpose of afforestation. Article 19 applies accordingly.

5. The Agency may in the way of an agreement, free of charges, transfer to the commune (gmina) real estate included in the Agency Resource, for the purpose of infrastructural investment.

Article 25.1. In case when there is no possibility or it is not purposeful to manage in the way defined in Article 24, Part 1, Parts 1-3 and Part 4 and 5 of the organized part of the real estate of the State Treasury, the Agency establishes an administrator managing the real estate on its behalf.

2. The establishment of the administrator takes place through a contract between the administrator and the Agency.

3. In the sphere not regulated by this Law, as concerns the contract referred to in Part 2, the regulations of Article 49a of the Law of 25 September 1991 on State Enterprises (Dziennik Ustaw z 1991 r., Nr 18, poz. 80 i Nr 75, poz. 329 i Nr 101, poz. 444 - Legal Journal 1991, No. 18, Item 80, No. 75, Item 329 and No. 101, Item 444) are in force.

Article 26.1. The Minister of Ownership Transformations may, in the time frame defined in Article 13, Part 1, transform the state farming enterprise into a single person shareholding company of the State Treasury, this basis proposal of the Agency or proposal of the state farm director and the workers council, after requesting an opinion from the Minister of Agriculture and Food Economy.

2. The rights of the State Treasury in relation to the shareholding companies, which are referred to in Part 2, are represented by the Agency.

3. The shareholding companies which are referred to in Part 1 are subject to regulations of the Law of 13 July 1990 on Privatization of State Enterprises (Dziennik Ustaw Nr 51, poz. 298 i Dziennik Ustaw z 1991 r., Nr 60, poz. 253 - Legal Journal 1990, No. 51, Item 298 and Legal Journal 1991, No. 60, Item 253), with the reservation however that the making available to third persons of the shares of the shareholding companies or the sale of shares of these shareholding companies is not permitted.

## Chapter 6

### Sales and Purchase of the Real Estate

Article 27. The sales and purchase of real estate, with the reservation made in Article 33, are conducted by the Agency or a subject authorized by it in the way of a contract, such as the commune.

Article 28.1. For the real estate which is the subject of sale the Agency prepares a listing, advertised in a manner accepted by custom in the particular locality for a period of 14 days prior to

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Law of

the day of the commencement of the sale; in relation to real estate the estimated value of which exceeds the equivalent of 5 thousand quintals (i.e. 500 tons), as determined in accordance with regulations on farmland tax, the listing in question should be also advertised in the national press.

2. The listing, which is referred in Part 1, includes:
- 1) the location and area of the real estate, basis real estate records,
  - 2) the type and quality class of land,
  - 3) reference in the land and real estate register for the particular piece of real estate,
  - 4) a description of the buildings and other assets components earmarked for sale.

Article 29.1. The sale of real estate takes place taking into account the right of pre-emption, following the regulations of the Civil Code.

2. The real estate which has not been sold on the basis of rules in Part 1 or which is not subject to the right of pre-emption, is subject to sale in the way of an open tender.

3. In cases justified from the economic point of view, the buyer may be selected basis a competition of offers, with the reservation of free choice of the offerer (competition of offers).

4. The Agency has the right of pre-emption when the real estate is resold by the buyer during five years from the moment the real estate has been purchased from the Agency.

Article 30.1. The price of hectare of land earmarked for sale basis regulations in Article 29, Parts 1 and 2 is established by:

- 1) taking into account market prices or
- 2) by multiplying the estimate rate per hectare by the price of one quintal (i.e. 100 kilograms) of rye determined in accordance with the regulations on the farmland tax, in force on the day of the making the sales agreement.

2. The value of other assets earmarked for sale is determined in relation to:

- 1) woods, perennial cultures and crops and plantings - in accordance with regulations used in expropriating real estate,
- 2) buildings, machines and equipment - according to their reproduction value, decreased by the degree of use, and in the case of liquidation - according to the value of post-scraping materials.
- 3) stocks and livestock - according to market prices.

Article 31. The Agency may split the payment of liabilities

into installments: the interest rate will be determined by the President of the Agency in agreement with the Minister of Finances.

Article 32. The Minister of Agriculture and Food Economy in agreement with the Minister of Finances, in the way of a decree, will determine the specific mode of sale of real estate and its components, the conditions of splitting the price into installments and the estimate rate, referred to in Article 30, Part 1, Section 2.

Article 33.1. State organizational entities which do not have legal status may purchase real estate for ownership by the State Treasury, if this is required for the implementation of their statutory goals.

2. The real estate purchased in the way of agreement by state organizational entities which do not have legal status remains in their administration for an undefined period of time.

3. The state organizational entities, which are referred to in Part 1, inform the Agency one month in advance of the procurement of real estate for ownership of the State Treasury.

## Chapter 7

### Administration

Article 34. Assets of the State Treasury included into the Resource of Agency may be transferred for administration by state organizational entities which do not have legal status and by the units of the State Forests.

Article 35.1. The transfer for administration, which is referred to in Article 34, takes place through the decision of the Agency.

2. The transfer for administration takes place for a defined or undefined period of time.

3. The entities which are referred to in Article 34, bear due to the title of executing the administration annual fees equal to the price of one quintal (100 kilograms) of rye per conversion hectare, according to regulations on farmland tax.

Article 36. The termination of administration takes place through a decision of the Agency:

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- 1) with the elapse of time for which the administration was established.
- 2) in case when the real estate in question or a part of it is no longer of use to the administrator.
- 3) in case when the administration is performed not in accordance with principles of proper management.
- 4) in case when the decisions of the local spatial management plan make it impossible to continue the present mode of use of the real estate.

Article 37. The Minister of Agriculture and Food Economy will define, through an administrative decision, the specific way of transfer of the assets, which are referred to in Article 34.

#### Chapter 8

#### Lease and Rent

Article 38.1. The assets included in the Resource may be leased or rented to natural persons or to legal persons, following the rules of the Civil Code.

2. Article 28 applies respectively to real estate which is subject to rent or lease.

3. The making of lease contracts for agricultural real estate included in the Agency Resource with foreign subjects is not allowed in a period of three years starting from the date of entry into force of the Law, with the reservation included in Part 4.

4. In exceptional, especially justified cases real estate included in the Agency Resource may be leased to a foreign subject basis agreement of the Minister of Agriculture and Food Economy.

Article 39.1. Conditions of lease are determined on the basis of tender of offers, presented by the subjects defined in Article 38, Part 1.

2. In case a number of equivalent offers is presented, priority is given to a company formed by the workers of the liquidated enterprise, the assets of which are the object of the lease.

Article 40.1. No rent is collected on quality Class VI farmland.

2. The Agency may exempt the leasee from rent payments on conditions defined in the contract:

- 1) in the period of the first three years of the lease of land

which has been idled for at least one year prior to the lease contract.

(2) in other cases, justified by the financial status of the leasee, for a period no longer than 5 years, provided in this period the leasee fulfills the conditions specified in the lease contract.

Article 41. Buildings and housing which constitute the Resource of Agricultural Property of the State Treasury in the understanding of Chapter 3 are not subject to the regulations of the Law of 10 April 1972 - Prawo Lokalne (Housing Law) (Dziennik Ustaw z 1987 r. Nr 30, poz. 165, z 1989 r. Nr 10, poz. 57, Nr 20, poz. 108, Nr 34, poz. 178 Nr 35, poz. 192 i Dziennik Ustaw z 1990 r., Nr 4, poz. 32, poz. 190 i Nr 34, poz. 198).

#### Chapter 9

##### Administration of Housing and Social Services

Article 42. From the Agency Resource housing assets may be set apart for the purpose of:

- 1) sale of apartments, together with auxiliary buildings, garages and attached land.
- 2) free of charge transfer for the commune (gmina) ownership through an agreement of housing, auxiliary buildings, garages and housing infrastructure to communal resources, together with the attached land.

Article 43.1. Priority in purchase of the presently occupied housing included in the Agency Resource is given to workers, retired and pensioned workers of the state farms which are the tenants of the housing.

2. The sale of apartments, land attached to them and auxiliary buildings, together with home gardens to persons specified in Part 1 takes place at market prices, decreased by 3 percent for each year of work in the state farms but no more than 90 percent, this valid in relation to:

- 1) employees of state farms no less than three years prior to the date of the sales contract,
- 2) retired and pensioned persons which are tenants in the apartments.

3. Priority in purchase and the conditions of sale of housing, defined in Part 1 and 2, concern also workers laid off due to economic circumstances, resulting from the restructuring of the state agricultural farms, which are tenants in the apartments.

4. The Council of Ministers in the way of an administrative

decision, will determine the rules and mode of operation as concerns the priority of purchase.

Article 44. In case of creation of a housing cooperative by the purchasers of apartments, which are referred to in Article 43, the Agency will transfer in the way of an agreement, free of charges, to the cooperative ownership the facilities included in the infrastructure attached to the housing.

Article 45. The Agency may schedule the payments which are referred to in Article 43, Part 2 into installments; the interest rate charged will be determined by the President of the Agency in agreement with the Minister of Finances.

Article 46. Persons occupying homes and housing included in the liquidated state farms keep, for an undefined period of time, the right to continue to live there; this does not concern the objects entered into the register of historical monuments.

Article 47.1. Persons which are referred to in Article 46 pay the lease rent in the amount covering the costs of exploitation of the housing and homes.

2. Retired and pensioned persons which keep their own households, who have in the past acquired the right to free housing due to their past employment in state farms, are exempted from payment of rent related to the costs of buildings and housing exploitation, with the exception of payments related to electric energy, gas, hot water and using water and sewage systems.

Article 48.1. The Agency may set apart assets serving social, cultural and sport activities, together with the attached land and transfer these, free of charges, in the way of an agreement, to gmina (commune) ownership in the area of which these activities are conducted.

2. Together with the assumption of activities which are mentioned in Part 1, the communes (gminy) enter into the so far in force obligations, resulting from the work relationship with the employed workers.

3. The transfer of assets defined in Part 1 in the period which is referred in Article 13, Part 1, until the time of assumption by the Agency, takes place upon proposal by the gmina (commune) on the basis of decision of the founding organ. Article 19 applies accordingly.

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Article 49. No payments in favor of the State Treasury are levied on contracts made basis Articles 42, 44 and 48.

Article 50. The exclusion from agricultural production of farmland attached to housing and social resources specified in Articles 42, 44 and 48, Part 1 takes place on the basis of the Law of 26 March 1982 on protection of Farmland and Forest Lands (Dz. U. Nr 11, poz. 79, z 1984 r. Nr 35, poz. 185, z 1988 r., Nr 24, poz. 169, Nr 34, poz. 198 oraz z 1991 r. Nr 101, poz. 444 i Nr 103, poz. 446) and is exempt from payments and liabilities which are referred to in these regulations.

#### Chapter 10

##### Final and Provisional Regulations

Article 51. Real estate which on the date of entry into force of the Law was:

- 1) administered by state organizational entities - continues to remain in their administration, with the reservation as in Article 13, Part 2.
- 2) in use by cooperatives and other legal entities - continues to remain in their use, with the reservation as in Article 13, Part 1.

Article 52.1. As of the day of entry into life of this Law, the rights resulting from Article 42, Part 1 are vested in the state agricultural farms until the transfer of the assets of the State Treasury on the basis of Article 12, Part 1.

2. For proceedings in matters which are referred to in Part 1, the regulations respectively in Articles 43-47 are in force, noting that the means obtained as result of sale of housing together with auxiliary buildings, garages and attached land, are transferred in favor of the Agency.

Article 53. Liquidation proceedings started before the entry into life of this Law on the basis of separate rules are continued on their basis, unless the founding organ transfers to the Agency, with the latter's acceptance, the assets of the liquidated enterprise. Article 14, Parts 1-4 apply respectively.

Article 54. In matters not regulated by this Law, the rules of the Civil Code apply, unless detailed regulations state otherwise.

Article 55.1. Liabilities due for real estate of the State Land

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Fund (Panstwowy Fundusz Ziemi), sold prior to entry into life of this Law, after deduction of commission due to the bank amounting to 5 percent, continue to be collected by the cooperative bank. These liabilities are transferred to the account of the Agency.

2. Liabilities for real estate sold after the day of entry into life of this Law are collected by the Agency.

Article 56.1. The sale of real estate to a candidate determined as the buyer according to regulations in force until the present takes place on conditions of this Law.

2. Real estate as to which proceedings are under way in relation to charges that it has been assumed by the State Treasury in contradiction to law, cannot be sold prior to conclusion of the proceedings.

Article 57. In matters commenced, concerning the determination of the candidate for buyer of real estate of the PFZ State Land Fund and the transfer of real estate into administration or use, which have not been concluded prior to day of entry into force of this Law, the regulations of this Law apply. The administrative proceedings in this matters are discontinued.

Article 58. In the Law of 12 March 1958 on sale of real estate of the State Land Fund (Panstwowy Fundusz Ziemi) and the setting into order of certain matters related to the conduct of the agricultural reform and agricultural settlement (Dziennik Ustaw z 1989 r. Nr 58, poz. 348 i z 1990 r. Nr 34, poz. 198) the following changes are introduced:

- 1) the name of the law is changed to: "on setting into order of some matters related to the conduct of the agricultural reform and agricultural settlement",
- 2) Chapters 1 and 2 are deleted.

Article 59. In the Law of 23 April 1964 - the Civil Code (Dziennik Ustaw nr 16, poz. 93, z 1971 r. Nr 27, poz. 252, z 1976 r. Nr 19, poz. 122, z 1982 r., Nr 111, poz. 81, Nr 19, poz. 147, Nr 30, poz. 210, z 1984 r. Nr 45, poz. 242, z 1985 r., Nr 22, poz. 99, z 1989 r. Nr 3, poz. 11 oraz z 1990 r. Nr 34, poz. 198, Nr 55, poz. 321 i Nr 79, poz. 464) Article 276 is deleted.

Article 60. In the Law of 17 May 1990 on the division of tasks and competence determined in specific laws between the organs of the commune (gmina) and the organs of State administration and the change of some laws (Dziennik Ustaw. Nr 34, poz. 198, Nr 43, poz.

253 i Nr 87, poz. 506 oraz z 1991 r. Nr 95, poz. 425) in Article 3, Part 2 is deleted.

Article 61. In the Law of 20 December 1990 on social security for farmers (Dziennik Ustaw z 1991 r. Nr 7, poz. 24, Nr 45, poz. 199, Nr 103, poz. 448 i Nr 104, poz. 450) the following changes are introduced:

in Article 58:

- 1) Part 2 is changed to:  
"2. The taking over of real estate and the determination of rate of payment takes place through a decision of the regional organ of State administration."
- 2) a new Part 3 is added, as follows:  
"3. The assumed real estate is transferred in favor of the Agricultural Property Agency of the State Treasury."
- 3) the hitherto Parts 3 and 4 are designated respectively 4 and 5.

Article 62. In the Law of 25 September 1981 on State Enterprises (Dziennik Ustaw z 1991 r. Nr 18, poz. 80, Nr 75, poz. 329 i Nr 101, poz. 444) in Article 49 the following changes are introduced:

- 1) in Part 1 the period is deleted after the first sentence and the words are added "or the Agency of Agricultural Property of State Treasury, after the second sentence the period is deleted and the words added "unless detailed regulations state otherwise",
- 2) Parts 2 and 3 are deleted.

Article 63.1. In the Law of 26 March 1982 on the change in the Law - the Civil Code and the revoking of the Law on regulation of ownership of agricultural farms (Dziennik Ustaw Nr 11, poz. 81) in Article 8 Paragraph 4 is deleted.

2. The final decisions issued on the basis of regulations of the Law of 25 October 1971 on regulation of ownership of agricultural farms (Dziennik Ustaw Nr 27, poz. 250 i z 1975 r. Nr 16, poz. 91) the regulations of the Code of Administration Proceedings concerning the reopening of proceedings, statement of invalidity and annulment or change of decision.

3. Administrative proceedings taking place in matters which are referred to in Part 2 are subject to discontinuation.

Article 64. In the Law of 25 July 1985 on research and development entities (Dziennik Ustaw z 1991 r. Nr 44, poz. 194) in Article 64 in Part 1, Item 1 before the word "land" the word "nonagricultural" is added.

Article 65. In the Law of 5 January 1991 - the Budget Law (Dziennik Ustaw Nr 4, poz. 18, Nr 34, poz. 150 i Nr 94, poz. 421) in Article 3 in Part 1 in Item 9 after the word "State" the words "unless specific regulations state otherwise" are added.

Article 66. In the Law of 29 April 1985 on administration of land and expropriation of real estate (Dziennik Ustaw z 1991 r. Nr 30, poz. 127 i Nr 103, poz. 446) the following changes are introduced:

- 1) in Article 2 in Part 1 the period is replaced by a comma and the words are added "unless detailed regulations rule otherwise",
- 2) in Article 61 in Part 1 after the word "allocate" the words are added "from the Resource of the Agricultural Property of the State Treasury".

Article 67. This Law enters into force as of 1 January 1992, with the exception of Article 64 which enters into force on the day of publication.

The President of the Republic of Poland: L. Walesa

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**ACT**  
**of 25 September 1981**  
**ON STATE ENTERPRISES**

*(Excerpts)*

## 5. STATE ENTERPRISES ACT

### ACT

of 25 September 1981

### ON STATE ENTERPRISES<sup>1</sup>

(Dziennik Ustaw 1981, No. 24, item 122 with later amendments; Dziennik Ustaw 1991, No. 18, item 80 and Dziennik Ustaw 1991, No. 75, item 329)

*(Excerpts)*

#### Chapter I. General Provisions

##### Article 1

A State enterprise is an independent, self-governing and self-financing economic subject having legal personality.

##### Article 2

1. The bodies of an enterprise take decisions on their own and organise all activity pertaining to the enterprise in accordance with the provisions of law and in order to carry out the enterprise's tasks.<sup>2</sup>

2. The organs of the State may take decisions pertaining to the activity of a State enterprise only in cases stipulated for by statutory law.<sup>3</sup>

##### Article 3

1. The Council of Ministers shall, by a regulation, specify the extent to which the provisions of this Act shall apply to enterprises subordinated to the Minister of National Defence, the Minister of Finance and the National Bank of Poland, as well as to enterprises operating at penitentiary establishments subordinated to the Minister of Justice.

2. The Council of Ministers shall, by a regulation, also specify the extent to which the provisions of this Act shall apply to State enterprises whose tasks, in whole or in the major part, are performed to meet the needs of the national defence and the security of the State, as well as to organisational units of other enterprises performing the said tasks.

##### Article 4

1. The provisions of this Act, except where they stipulate the register of State enterprises and the income commission a State enterprise, shall not apply to:

1) the State enterprise "Polskie Koleje Państwowe" (Polish State

Railways),

2) the State enterprise "Porty Lotnicze" (Airports),<sup>5</sup>

3) the State enterprise Polskie Linie Lotnicze "Lot" (Polish Airlines "Lot").<sup>6</sup>

2. The provisions of this Act, except where they stipulate the register of State enterprises, shall not apply to:

1) banks,<sup>7</sup>

2) State enterprises being established by virtue of article 6, paragraph 2, letter a of the Act of 20 December 1949 on State Forestry Management (Dziennik Ustaw No. 63 item 494, Dziennik Ustaw 1950, No. 49, item 448, Dziennik Ustaw 1971, No. 27, item 249; Dziennik Ustaw 1974, No. 24, item 142, Dziennik Ustaw No. 1982, No. 7, item 54, and Dziennik Ustaw 1989, No. 35, item 192).

### Chapter 3. Mixed Enterprises<sup>8</sup>

#### Article 10

1. Organs of the State administration may, together with other States, form and liquidate international enterprises.

2. Terms of forming and liquidating as well as the rules of functioning of such enterprises shall be set forth by arrangements and agreements concluded between the concerned States.

#### Article 11

A State enterprise, jointly with other legal persons, and also natural persons, may form economic entities, provided for by the provisions of law, for justified economic purposes.

### Chapter 6. Merger, Division and Liquidation of Enterprises

#### Article 18

1. The merger and division of a State enterprise established in accordance with the procedure specified in article 7 shall be ordered by the founding organ on its own initiative, having the consent of the enterprise employees' council, or on a motion of the director of the establishment of an enterprise composed of many establishments, supported by the establishment employees' council or by at least 50 per cent of the personnel of the establishment in which no employees' council exists.

2. In order to better utilize the means of production and to improve economic efficiency, the competent minister (respective with regard to

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the enterprise's objects) may take decisions concerning division of a State enterprise:

- 1) on his own initiative,
- 2) on a motion of the founding organ or the enterprise's employees' council,
- 3) on a motion of the employees' council and the manager of the establishment drawing up the balance sheet or the manager of an establishment having no employees' council, having sought the opinion from the founding organ and the organs of the enterprise. The said decisions may be objected by virtue of article 63.<sup>9</sup>

#### Article 18a

1. The liquidation of a State enterprise consists in disposing of its tangible and intangible assets under article 55 of the Civil Code, and in removing the State enterprise from the register, having satisfied or secured the creditors.

2. The sale of an enterprise as a whole by virtue of article 37 of the Act of 13 July 1990 on Privatisation of State Enterprises (Dziennik Ustaw No. 51, item 298 and Dziennik Ustaw 1991 No. 60, item 253) can be effected without the liquidation of a State enterprises in the meaning of paragraph 1.

3. The founding organ shall notify the bodies of a State enterprise of its intention to sell the enterprise in the course specified in paragraph 2. Article 63 shall apply to objection procedure respectively.

#### Article 19

1. A State enterprise may be liquidated if:
  - 1) the enterprise's profit, after taxes burdening it, is not sufficient to pay the obligatory dividend,
    - 1a) the enterprise which is exempt from paying the obligatory dividend carries on economic activity with a loss,
  - 2) the activity of the enterprise in all its fields has been forbidden by a valid judgement of court or a final administrative decision, and the enterprise has not taken up activity in any other field,
  - 3) a respective motion is made by the commisionary administration,
  - 4) over half of the value of the enterprise's assets jointly:
    - a) consists in shares, other titles of participation in partnerships and companies, or bonds,
    - b) has been made accessible for use by other parties by virtue of civil law agreements.
2. The decision on liquidation is taken by the founding organ on its own initiative or on a motion of the enterprise's employees' council, unless the Minister of Finance or the Minister for Ownership Transfor-

mations<sup>10</sup> objects within 14 days.

**Article 20**

The decision of the founding organ under article 19 paragraph 2 may be appealed against by the employees' council and the managing director of the enterprise following the procedure specified in article 63.

.....

**Article 25**

1. The Council of Ministers shall, by a regulation, specify:

- 1) the procedure of merger and division of State enterprises,
- 2) the ways of liquidation of State enterprises, and especially the obligations and rights of the liquidator, the ways of disposing of tangible and intangible assets of a State enterprise as well as of transferring its property, in the course of liquidation, to the commune (intercommunal union) or to State legal persons, and the ways of satisfying or securing the creditors.

2. The Council of Ministers shall, by a regulation, specify the types of the State Treasury-guaranteed employees' claims which are maintained or established after liquidation of a State enterprise, as well as the principles of satisfying such claims.

3. Paragraphs 1 and 2 shall apply to the liquidation of a State enterprise under article 37 of the Act on Privatisation of State Enterprises and article 16 paragraph 7 of the Act of 5 January 1991: the Budget Law (Dziennik Ustaw No. 4, item 18 and Dziennik Ustaw No. 34, item 150).

.....

**Chapter 8. Bodies of the State Enterprise**

**Article 30**

The bodies of the State enterprise are: the general meeting of employees (delegates), the employees' council and the director of the enterprise.

.....

**Article 32**

1. The director of the State enterprise manages the enterprise and represents it towards third parties.

2. The director of a State enterprise, acting in accordance with the provisions of law, takes decisions on his own and is responsible for the said decisions.

.....

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### Chapter 8a. Agreement on Management of the Enterprise

#### Article 45a

1. The employees' council of an enterprise, having the consent of the general meeting of employees (delegates), may apply to the founding organ to entrust a natural or a legal person with the management of the State enterprise.

2. The procedure of entrusting with the management consists in the concluding of an agreement for a specified time, not shorter than three years, between the State Treasury represented by the founding organ, and the administrator (agreement on management of the enterprise).

3. The agreement on management of the enterprise should specify the following:

- 1) the obligations of the administrator in the scope of current management as well as changes and improvements in the enterprise,
- 2) the principles of administrator's remuneration, including the right to participate in the enterprise's profit,
- 3) the criteria of management efficiency evaluation,
- 4) the responsibility for the entrusted enterprise.

4. If the administrator is a legal person, the agreement should stipulate who, on behalf of that legal person, shall perform the acts of administration.

5. The administrator, and in the case of paragraph 4 a person acting on his behalf, is empowered to produce all statements of will on behalf of the managed enterprise.

#### Article 45b

1. Upon the administrator's taking up his duties:

- 1) the bodies of personnel's self-government are dissolved by virtue of the law,
- 2) the founding organ recalls the director of the enterprise,
- 3) the administrator takes over the competence of the bodies of personnel's self-government and the director of the enterprise, with the exception of the right to object against the decision of the founding organ.

2. In the State enterprise, in which the administrator has taken up his duties, the founding organ establishes the supervisory council in accordance with article 59 and entrusts it with permanent supervision over the enterprise's activity.

3. The employees of the enterprise elect one third of the number of supervisory council's members. Provisions on the election of the members of the employees' council shall apply respectively.

**Article 45c**

1. The founding organ may terminate forthwith the agreement on management of the enterprise, if:

- 1) the administrator, in connection with his managing of the enterprise, flagrantly infringes the law,
- 2) the State enterprise fails to fulfil its obligations towards the State Treasury on account of taxes or the obligatory dividend for at least 3 consecutive months,
- 3) the administrator has considerably infringed the provisions of the agreement on management of the enterprise.

2. As soon as the agreement on management of the enterprise is terminated, the supervisory council of the enterprise shall order and hold elections to the organs of self-government of the enterprise's personnel, unless an agreement for a further period has been concluded.

**Article 45d**

The Council of Ministers shall, by a regulation, determine the procedure of concluding the agreement on management of the enterprise.

.....

**NOTES**

1. The amendments to the State Enterprises Act introduced during the last two years are to serve the commercialization of enterprises, and thus the transformation of the system of management, which is to ensure State enterprises economic efficiency and the level of initiative similar to that of private enterprises, as well as to prepare State enterprises for the change of the type of ownership. The commercialization of State enterprises is inevitable because their further functioning in accordance with the principles now in force makes it impossible for the Polish economy to fight the recession.

2. See Chapter 8 article 30 of this Act.

3. The organs of the State may take decisions concerning enterprise's activity, e.g. in the matters relating to the public utility enterprises (article 6 paragraph 2 of the Act on State Enterprises), and they may take a decision on the liquidation of an enterprise (article 19 paragraph 2).

4. The Act on the State Enterprise Polskie Koleje Państwowe (Polish State Railways) (Dziennik Ustaw 1989, No. 26, item 138).

5. The Act on the State Enterprise "Porty Lotnicze" (Airports) (Dziennik Ustaw 1987, No. 33, item 185).

6. The Act on the State Enterprise Polskie Linie Lotnicze "Lot" (Polish Airlines "Lot") (Dziennik Ustaw 1984, No. 55, item 281).

7. The Banking Law Act (Dziennik Ustaw 1989, No. 4 item 21), National Bank of Poland Act (Dziennik Ustaw 1989, No. 4, item 22).

8. The notion of a mixed enterprise has been used to define two different categories of subjects:

1) international enterprises which can be formed only on the initiative of the organs of the State administration;

2) partnerships, companies and other legally permissible forms of activity which are established on the initiative of a State enterprise merging with other legal or natural persons for economically justified purposes.

9. The director of the enterprise and the employees' council have the right to submit an objection to the competent minister who has issued the decision within 7 days of the date of its delivery. The objection stops execution of the decision.

10. By virtue of the Decision made by the Minister on 24 June 1991 his office uses a name "Ministry of Privatisation" for practical purposes of international relations.

Annotated by *Teresa Drozdowska*

Translated by *Dariusz M. Chmiel*

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**ACT**  
**OF SEJM**  
**of September 16, 1982**  
**ON COOPERATIVE LAW**

# ACT OF SEJM OF SEPTEMBER 16, 1982 COOPERATIVE LAW

14.10

Translated by  
LECH PETROWICZ

GROWER

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## FOREWORD

The Cooperative Act passed by the Polish Sejm (Parliament) on September 16, 1982, is a legislative act of momentous significance for cooperative practice and opens up a new stage in the development of the Polish cooperative law.

In the initial period of the development of the Polish cooperative movement, the legislation of the partitioning powers was applicable to cooperatives. Prior to 1914, the legal status of cooperatives in the Polish territories was the following: in the southern voivodships, the 1873 Austrian law on profit and economic cooperatives was in force, and in the western voivodships — the 1898 German law on cooperatives. In the Russian partition zone, there was no special law regulating the activity of cooperatives. Only as regards some matters, the provisions of the credit law, the regulations concerning craftsmen's funds, and the provisional regulations on associations of 1906 were applicable. The legal difficulties in the Russian zone forced co-operators to seek ways of sidestepping the law: cooperative societies functioned in a different legal form (limited partnerships, notarial contracts on the joint sale of farm produce and the joint purchase of machines).

Immediately after the resurrection of the Polish state in 1918, work commenced on the preparation of cooperative law. On the basis of the results of a poll conducted among cooperative activists, an Act was drafted which was adopted on October 29, 1920. The new law was similar, in its content, to the Central European system of regulating cooperative problems (a separate Cooperative Act, the registration of cooperatives in court, audits conducted by the cooperative unions, etc.). The 1920 Act was amended five times (Dec. 4, 1923, March 13, 1934, Aug. 24, 1945, Oct. 28, 1949). Before World War Two, the 1934 amendment was the most important, since it strengthened the position of the auditing unions and of the State Cooperative Council and extended their powers onto the domain of supervision over cooperatives (inter alia, the duty was introduced to obtain the statement of purposefulness in case of the foundation of new cooperatives).

The 1949 amendment to the Act and the enactment in 1948 of three laws supplementary to the Cooperative Act (the law on the Central Cooperative Union and cooperative central boards, the law on mixed state and cooperative central boards, and the law on mixed state and cooperative enterprises) were connected with the necessity to adapt the cooperative law to the demands of central planning. The provisions introduced in the cooperative legislation

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at that time reflected a tendency toward excessive centralism and represented a substantial limitation of cooperative self-government and democracy.

In 1954 preparatory work began on the draft of a new cooperative law, but the preparations did not gain momentum until after 1956, in the new political atmosphere that arose at that time. The principles of the draft were submitted to public discussion with the participation of a broad representation of cooperators and were approved by a national cooperative conference convened for this purpose in June 1957, in a document entitled "The Main Theses for the Draft Law on Cooperatives and Their Unions". The draft prepared by a cooperative commission set up by the Central Co-operative Union was submitted to the Sejm in February 1958, and after it had been examined by an Extraordinary Sejm Committee it was enacted on February 17, 1961. The 1961 Act dealt with many new questions, especially as regards some types of cooperatives, such as farming cooperatives, industrial productive cooperatives, and housing cooperatives, devoting separate chapters to them. The 1961 Act lifted many restrictions of the independence of cooperatives, introduced in 1948 and 1949, but it did not protect cooperatives against far-reaching interference in their internal affairs in conditions of the directive system of management of the national economy.

The necessity to amend the 1961 Act was pointed out by cooperators already in the 1970's. Many weighty arguments were cited: that since the entry of the Act into force substantial changes had occurred in the Polish legal system, such as the changes in the administrative law, in the structure of local administrative authorities, in the labour law, in the housing law, and in some branches of the civil law. The cooperative law is a part of the legal system in Poland, and it is thus understandable that major changes in this system necessitate the harmonizing of the cooperative law with these changes. The provisions of the 1961 Act were to some extent adapted to the new Labour Code in the law of December 17, 1974, but even in this respect the amendments were insufficient. The other group of factors necessitating amendments to the Cooperative Act were the transformations and changes in the cooperative movement itself, in its structure and organizational forms, which called for complementing the existing provisions whenever gaps or ambiguities were ascertained, or when it was necessary to adapt the provisions of the law to the demands of practice (for example, there was a lack of provisions concerning the division of a large cooperative into one or more smaller ones, regulations of the legal status of members of industrial productive cooperatives employed on the basis of a cottage work contract, or regulations of the cooperative right to business premises).

The work on the draft of a new law commenced at the Supreme Co-operative Council in 1974. It can be divided into two phases. In the first phase, until the events in Gdańsk in August 1980, the attention focused chiefly, though not exclusively, on proposals aimed at filling the gaps and adapting the existing provisions to the altered structure and organization of the cooperative movement. In the second phase, the preparatory work, conducted in the atmosphere of nation-wide discussion on a renewal of public life and

a basic reform of the national economy, embraced many fundamental problems of the cooperative law, above all, ensuring the independence of cooperatives and limiting the excessive interference in cooperative matters, not only by state authorities, but also by the central cooperative unions. The draft was elaborated by a committee composed of members of the Legal Commission of the Supreme Co-operative Council and of invited specialists in the domain of the cooperative law, among them scholars, justices of the Supreme Court, and legal advisers of central cooperative unions. The draft was debated several times by the Praesidium of the Supreme Co-operative Council and also discussed by the Legislative Council at the Council of Ministers, which made many critical remarks. The first phase of the work on the draft ended with its submission, in June 1980, to the Council of Ministers, which, reviewing it on October 15, 1980 — and thus under the new conditions that had emerged in Poland after the August events in Gdańsk — approved the draft preliminarily, but recommended a broad public discussion of it. The Praesidium of the Supreme Co-operative Council submitted it to such a discussion, sending the draft to cooperative organizations, other social organizations, and political parties and inviting proposals for changes. The provisions of the draft were the object of many critical evaluations by various organizations as well as by the press. During this public consultation, which encompassed the key legal and organizational questions of the cooperative movement and was paralleled by the discussion on the principles of the economic reform, over 500 proposals of changes in the draft were submitted. The problem of the new law was also examined by the Commission for Economic Reform. Group X of the Commission prepared theses for the draft, which were approved by the Commission at its plenary meeting on April 28, 1981. As a consequence of the remarks and proposals submitted, the draft was fundamentally reworked with the participation of the interested commissions of the Supreme Co-operative Council. The new version was discussed and approved by the General Meeting of the Co-operative Council on November 27, 1981.

The draft was next submitted to the Sejm by a group of 24 deputies and referred to the Extraordinary Commission for the draft law on cooperatives and their unions and to the Sejm's Legislative Work Committee. It was discussed by four problem groups. The Sejm committees, whose debates were attended by specialists from cooperative organizations and ministries concerned, introduced many essential changes in the draft; among other things, following a controversy over the question of whether the Act should be entitled "law on cooperatives and their unions" (as was the 1961 Act), or "law on cooperatives" (as the 1920 Act), the Sejm committees accepted the proposal "cooperative law", thereby emphasizing that the Act codifies this branch of law.

The new Act is an extensive document containing 281 articles. Just as the 1961 Act, it is divided into three parts: I — Cooperatives, II — Cooperative Unions and Supreme Co-operative Council, and III — Changes in the Binding Provisions and Temporary and Final Provisions. Title 1 part 1

(art. 1 to 137) contains provisions concerning all cooperatives, while title II of the same part (art. 138—239) includes special provisions for agricultural productive cooperatives, industrial productive cooperatives, and housing cooperatives. Part II is divided, as before, into two titles: Cooperatives Unions (art. 240—257) and Supreme Cooperative Council (art. 258—267).

As compared with the 1961 Act, the new Act attaches special weight to the precise definition of the cases of permissible external interference into the affairs of cooperatives. Of essential significance is the principle contained in art. 2 § 2, according to which "local organs of state power and organs of state administration may pass legal regulations and decisions, binding on the cooperative, on the basis of and within the powers provided for in the acts of the Sejm". The further provisions limit to the minimum the possibility of interference by state authorities: "the proper organ of state administration shall have a right to impose on the cooperative the obligation to introduce tasks into the plan or assign unplanned tasks if this is indispensable because of the demands of defence of the country or in case of a natural calamity" (art. 71). In such a case, the organ of state administration is obliged to provide the cooperative with means necessary to carry out these tasks. If, in effect of fulfilling this obligation, the cooperative incurs a loss, it may demand compensation and take legal action. Similarly, according to art. 72, the cooperative may prosecute its claims in court if it has concluded with the state organ an agreement in which it undertook to conduct unprofitable activity, necessary to meet social needs, and the state organ has failed to furnish the cooperative with means stipulated in the agreement and enabling the cooperative to conduct this activity on a profitability basis.

The new Act aims at loosening the tie of the economic activity of the cooperative to the state plan of socio-economic development and emphasizes the economic independence of the cooperative. Whereas the previous law defined the cooperative as an association whose aim is "conducting economic activity under the national economic plan", the new Act provides that the cooperative "shall conduct economic activity, being guided by the needs of the associated members and by assumptions laid down in central and local socio-economic plans" (art. 1), "shall conduct its activity independently" (art. 2 § 1) "on the basis of plans elaborated independently", and "these plans shall, according to the provisions of the Rules, be adopted by the general meeting or the council of the cooperative" (art. 69). The activity of the cooperative "shall be financed out of its own funds which may be supplemented by bank credits and other financial resources" (art. 67).

The new Act does not introduce any basic changes in the organizational structure of cooperatives which are still obligated to create the three main bodies: the general meeting (replaced in large cooperatives by the meeting of delegates), the supervisory council, and the board, and they may create other organs. On the other hand, in connection with the process of concentration which occurred in the past decade and manifested itself in the creation of large cooperatives, the Act obliges the large cooperatives to organize meetings of groups of members residing in the same area, employed in the same

establishment, having common professional interests, or on any other basis stipulated in the Rules. The powers of these meetings comprise, aside from electing the delegates, examining the reports of the council and the board, expressing opinions and submitting motions, and, if the Rules so provide, electing and recalling members of the council. Another innovation is that the cooperative is obliged to set up employee self-management in establishments employing over 50 persons. The powers of self-management bodies consist chiefly in passing opinions (art. 60—65). Meeting the postulates of practitioners, the new law defines the legal status of the manager of the cooperative who is not a member of the board and also the status of the chairman or another member of the board who directs the day-to-day activity of the cooperative (art. 53). With a view to ensuring cooperative democracy, the Act provides that the members of the organs of the cooperative are elected "by secret ballot from amongst an unlimited number of candidates" (art. 35 § 2).

The new law retains the obligation of the cooperative to be a member of one of the central unions, but grants the cooperative the right to withdraw, in certain cases, from one union and join another whose scope of activity corresponds to the subject matter of the activity of the cooperative (art. 4). Among the functions of the central unions, prominence has been given to the auditing function. The central union may perform economic functions only when this is provided for in its Rules passed by the congress of delegates of the associated cooperatives. The powers of the central unions in the field of supervision over cooperatives have been reduced considerably. The central union may not annul resolutions of the general meetings and supervisory councils but may only seek the repealment of such resolutions in a court of law in case of a violation of the law or the Rules (art. 43 and 47). The influence of the central unions on the composition of the boards of cooperatives has been curtailed. While under the 1961 Act a member of the board of the cooperative could be recalled by the board of the central union if his activity was inconsistent with the provisions of the law, the Rules, the resolutions of the central union or the Supreme Cooperative Council, the new law provides that "if an audit reveals grave violations of the provisions of the law or the Rules in the activity of a member of the board and the proper organ of the cooperative does not recall him within a period fixed by the appropriate central union, the board of that union may recall him"; both the recalled member of the board and the cooperative may appeal the resolution on recalling to the court of law (art. 51). It should be added that statements of purposefulness of the foundation of a new cooperative, issued by the central unions, are — in the light of the new law — of the character of an advisory opinion for the court, which may register the new cooperative in defiance of the stance of the central union (art. 9).

Important changes have been introduced in the provisions contained in part I, title II dealing with the individual types of cooperatives. This concerns, in particular, the chapter devoted to farming cooperatives, which has an entirely new content and bears a new title: "Agricultural Productive Cooperatives", since it comprises provisions concerning, apart from farming co-

operatives, also specialized agricultural cooperatives, provisions concerning agricultural circles (which supply agricultural services), and provisions concerning other cooperatives which may be founded for the purpose of running a collective farm.

There are also many innovations in the chapter dealing with housing cooperatives. Taking into account the changes in practice, the new Act has abandoned the previous division of cooperatives into three types (building and housing cooperatives, housing cooperatives, and cooperative societies for building one-family houses) and adopted only one type of cooperatives which may grant their members the right to dwellings of various kinds: they may allot members apartments in buildings constituting the property of the cooperative, build one-family houses or apartment buildings for the purpose of transferring to members the ownership of these houses or buildings, extend aid to members in building their own houses. The provisions concerning garages and business premises have likewise been altered (art. 238 and 239). Also modified has been the long-criticized provision according to which only one of the spouses possessed the cooperative right to the dwelling; under the new Act, the right to the dwelling "allotted during matrimony to both spouses or one of them to satisfy the housing needs of the family shall be vested in both spouses jointly", and both spouses may be members of the cooperative even if only one of them possessed the cooperative right to the dwelling (art. 215).

In the chapter devoted to industrial productive cooperatives, cooperatives of the disabled and cooperatives of folk and artistic industry have received separate treatment. Likewise the law regulates the status of members of industrial productive cooperatives employed on the basis of a cottage work contract, a commission contract, or a piecework contract (art. 201—203).

On the initiative of youth organizations, a provision concerning youth cooperatives has been included in the new Act. The law defines the youth cooperative as a cooperative set up by young people, the Rules of which provide for allocating a part of the surplus to finance the activity of a youth organization. To such cooperatives, the Minister of Finance, at the request of the proper central union, may grant definite privileges (art. 74).

It follows from the above that the new Act introduces many essential changes in the Polish cooperative law. One should stress here, above all, the curtailment of the legal foundations for interfering in the internal affairs of cooperatives; moreover, the cooperatives have gained wide possibilities to freely shape their organizational structures, since the central unions have been deprived of the right to establish specific principles to which the Rules of the cooperatives were bound to conform. The competence of courts in cooperative matters has been widened considerably. Many gaps in the previous law have been filled (the provisions concerning the division of the cooperative and the accession of an organizational unit of the cooperative to another cooperative, the loopholes in the provisions concerning industrial productive cooperatives and housing cooperatives).

The new Act is one of the many passed by the Sejm in 1981 and 1982,

designed to lay the legal foundations for the reform of the national economy, intended to ensure to all enterprises a much wider margin of freedom than they have enjoyed so far and to enhance the role of the market and competition in the national economy. Thus, the new cooperative law also provides for an increase of independence and a limitation of outside interference. It should be borne in mind, however, that the new Act enters into force in a period of an acute economic crisis and strict control of the production of and trade in many articles, which doubtless limits the possibilities for the full enjoyment of the powers to develop independent economic activity. Hence, one should expect that the cooperatives will only gradually become more and more independent economically. The new Act, like other acts of fundamental importance for the economic reform, unfolds such prospects.

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Chairman of the Legal Commission  
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**Act of Sejm**  
of September 16, 1982  
**COOPERATIVE LAW**

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**PART I\***  
**Cooperatives**

**TITLE I**

**JOINT PROVISIONS**

**Chapter I**

**The Cooperative and Its Rules**

**Art. 1.** The cooperative shall be a voluntary and self-governing association with an unlimited number of members and a variable share fund; it shall conduct economic activity, being guided by the needs of the associated members and by assumptions laid down in central and territorial socio-economic plans, and also socio-educational activity with a view to constantly improving the material and cultural standard of living and the level of social consciousness of its members and to the benefit of the Polish People's Republic.

**Art. 2. § 1.** The cooperative shall conduct its activity independently.

**§ 2.** Local organs of state power and organs of state administration may pass legal regulations and decisions, binding on the cooperative, on the basis of and within the powers provided for in the acts of Sejm.

**Art. 3. § 1.** The cooperative shall cooperate with cooperative organizations and with other social and economic organizations, or accede to them or groups thereof, on the basis of an agreement.

**§ 2.** The cooperative may undertake joint tasks with organizations referred to in the preceding section in any forms provided for by law. It may, in particular, form with these organizations cooperatives of legal persons, commercial and non-commercial companies.

**Art. 4. § 1.** The cooperative shall associate, according to its choice, in one of the central cooperative unions performing auditing functions, the scope of activity of which corresponds to the subject matter of the activity of the cooperative, hereafter referred to as "appropriate central union". Moreover, the cooperative may associate in other cooperative unions to pursue common economic and social objectives.

**§ 2.** The Supreme Cooperative Council, hereafter "Supreme Council", shall be the supreme organization of the cooperative movement in Poland.

\* Act of Sejm of September 16, 1982 Cooperative Law, Dziennik Ustaw PRL of 1982, no. 30, Item 210.

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§ 3. The Supreme Council shall perform the functions of the appropriate central union with respect to a cooperative for which, in view of its subject matter, there is no such union.

Art. 5. § 1. The Rules of the cooperative shall specify:

- 1) the name, which shall contain the word "cooperative" and be clearly distinct from the names of other registered cooperatives having their seat in the same locality;
- 2) the seat of the cooperative and the territory of its activity;
- 3) the aim of the cooperative, the subject matter of its economic activity, and its duration if it has been founded for a specific period of time;
- 4) the amount of the admission fee;
- 5) the value and number of shares which a member is obliged to declare, the manner and date of contributing and refunding them, and the consequences of a failure to pay in shares on time;
- 6) the rights and duties of members;
- 7) the principles of admission, withdrawal, striking off, and exclusion of members;
- 8) the manner of convoking general meetings, of debating at them, and the conditions of adopting resolutions;
- 9) the principles of division of the balance surplus and of covering losses (arts. 78 and 90).

§ 2. The Rules shall moreover contain provisions, the introduction of which into the Rules is required by the provisions of this Act.

§ 3. The Rules may, in addition to the provisions referred to in § 1 and 2, contain also other provisions.

## Chapter II

### The Mode of Foundation and Registration of the Cooperative

Art. 6. § 1. Persons intending to found a cooperative (founders) shall adopt the Rules of the cooperative, confirming the adoption by affixing their signatures to them, and elect the organs of the cooperative, the election of which, according to the Rules, falls within the competence of the general meeting, or shall elect an organizing committee composed of at least three persons.

§ 2. The number of founders may not be smaller than ten when the founders are natural persons, or three when the founders are legal persons.

§ 3. The board or the organizing committee of the cooperative shall apply to the appropriate central union for a statement of purposefulness of the foundation of the cooperative. The central Union shall issue a statement of purposefulness after consulting the appropriate organ of the proper local people's council.

§ 4. The central union may deny a statement of purposefulness if its

appraisal of the economic possibilities of the cooperative to be founded indicates that it will not be able to pursue the intended goals.

§ 5. The central union shall notify the applicant of a decision in the matter of issuing a statement of purposefulness of the foundation of the cooperative within two months of the date of the application. A negative decision shall contain a justification.

§ 6. If the board and supervisory council of the cooperative have not been elected yet, the founders of the cooperative shall elect them immediately after receiving a statement of purposefulness of the foundation of the cooperative.

Art. 7. § 1. The board of the cooperative shall, within two months of the date of receiving a statement of purposefulness, apply to the registration court, in the district of which the cooperative is to have its seat, for entering the cooperative into the register of cooperatives and their unions, hereafter "register". Unless an application is filed within this period, the statement of purposefulness shall lose its validity.

§ 2. The application shall be appended with:

- 1) two copies of the Rules,
- 2) transcripts of documents stating the election of the board and council
- 3) statement of purposefulness,
- 4) other documents, the submitting of which is required by special regulations.

§ 3. The application shall be signed by all members of the board of the cooperative. Their signatures shall be authenticated by the court or a public notary's office.

Art. 8. § 1. The court shall make a decision on entering the cooperative into the register after ascertaining that the Rules passed by the founders are consistent with legal regulations.

§ 2. If the court finds shortcomings in the application or the Rules, it shall demand amendments by a fixed date. After an ineffective expiry of the prescribed period, the court shall pass a decision denying the registration.

Art. 9. § 1. The board of the cooperative may apply to the registration court for entering the cooperative into the register also in case the central union has refused to issue a statement of purposefulness, if it regards the refusal to be in contravention of art. 6 § 4. In such a case, the application shall specify objections against the refusal to issue a statement of purposefulness and be appended with the said refusal. The provision of art. 7 shall apply accordingly.

§ 2. In the case referred to in the preceding section, the court shall pass a decision to enter the cooperative into the register after ascertaining that there have been no grounds to deny a statement of purposefulness for reasons defined in art. 6 § 4. The provision of art. 8 § 2 shall apply accordingly.

Art. 10. § 1. The entry of the cooperative into the register shall contain the following details:

- 1) the name of the cooperative and its seat;
- 2) the subject of the economic activity of the cooperative and the territory of its activity;
- 3) the duration of the cooperative if it has been founded for a specific period of time;
- 4) the sum and number of shares which a member shall contribute;
- 5) a mention of a right or obligation to make contributions if the Rules provide for such a right or obligation;
- 6) the names of members of the board, the manner in which they represent the cooperative, and also the names of persons temporarily performing the functions of members of the board;
- 7) limitations of the powers of the board provided for by the Rules and also by resolutions of the general meeting or the council adopted within their statutory powers;
- 8) the names of plenipotentiaries who have been granted authority to perform acts connected with the day-to-day management of the economic activity of the cooperative, or of an organizationally and economically independent unit thereof, and the limits of their authority.

§ 2. The entry into the register shall also contain details concerning a merger of the cooperative, accession of an organizational unit of the cooperative to another cooperative, a division of the cooperative, liquidation, bankruptcy, the names of liquidators, the name of the receiver in bankruptcy, and changes and supplements of the details listed in this section and in the preceding section.

§ 3. In case of notifying a change of members of the board or liquidators, authenticated signatures of the new members or liquidators shall be enclosed to the notification.

§ 4. Unless the Act provides otherwise, the board or liquidator shall notify changes and supplements of the details listed in § 1 and 2 within two weeks from the day on which these changes or supplements occurred.

§ 5. In case the members of the board or liquidators fail to notify changes or supplements, the court may impose upon them disciplinary penalties totalling up to 5,000 zlotys. Moreover, the court shall notify the appropriate central union of each failure to fulfill the registration duty. In case the registration duty is later fulfilled, the court may rescind the imposed penalty.

§ 6. A decision of the court on imposing a disciplinary penalty shall be subject to appeal.

Art. 11. § 1. The cooperative shall acquire legal personality upon being entered into the register.

§ 2. Persons acting prior to the registration of the cooperative shall be solidarily responsible toward third persons for acts performed in the interest of the cooperative before the registration. After the registration,

the cooperative shall be responsible for obligations resulting from these acts as for obligations incurred by itself. However, persons acting before the registration shall be responsible toward the cooperative under the provisions of civil law.

Art. 12. § 1. Third persons may not plead ignorance of details entered into the register unless they prove that they could not know them.

§ 2. The details referred to in art. 10 § 1 and 2 which have not been entered into the register shall not have legal consequences toward third persons unless it is proved that they knew these details.

Art. 13. The Council of Ministers, after consulting the Supreme Council, shall define, by way of an order, the manner of keeping the register and procedures in matters relating to the register of cooperatives.

Art. 14. The Monitor Spółdzielczy, published by the Supreme Council, shall be the proper organ to publish announcements of cooperatives provided for by the law.

### Chapter III

#### Members, Their Rights and Duties

Art. 15. § 1. The cooperative shall have at least ten members unless the Rules require a larger number.

§ 2. Membership of the cooperative shall be open to any natural person enjoying full legal capacity who meets the requirements stipulated in the Rules unless the Act provides otherwise.

§ 3. Moreover, the Rules may specify cases in which persons with a limited legal capacity or not having such a capacity may become members. Such persons may not be members of the organs of the cooperative. They shall take part in the general meeting through their legal representatives.

§ 4. Also legal persons as well as political organizations not having a legal personality may be members of the cooperative unless the Rules provide otherwise. The provisions of this Act concerning members who are legal persons shall accordingly apply to such organizations.

§ 5. A cooperative whose members are, according to the Rules, exclusively legal persons shall have at least three members.

Art. 16. § 1. The filing of a declaration shall be the condition of membership. The declaration, to be valid, shall be filed in written form. The declaration, signed by the acceding person, shall contain his name and place of residence and in case of accession of a legal person — its name and seat, the number of shares declared, details concerning contributions if the Rules provide for making them, and also other details provided for in the Rules.

§ 2. Also further shares and any changes of the data contained in the declaration shall be declared in written form.

§ 3. A member may, in the declaration or in a separate written state-

ment submitted to the cooperative. Indicate the person whom the cooperative shall be obliged, upon the member's death, to pay his shares. The right to the shares shall not be part of the inheritance.

Art. 17. § 1. The founders of the cooperative who have signed the Rules shall become members of the cooperative upon its registration. Those acceding to the cooperative after its registration shall become members of the cooperative upon being admitted to it.

§ 2. The admission shall be certified in the declaration by the signatures of two members of the board, or of persons authorized to do this by the board, giving the date of the resolution on admission. The same shall apply to changes of the details concerning the declared shares or contributions.

§ 3. Unless the Rules provide otherwise, a resolution on admission shall be adopted within a month from the day of filing the declaration. A resolution on admission to the cooperative or a resolution refusing admission shall be notified in writing to the person concerned within two weeks from the date of its adoption. A notification of refusal of admission shall contain justification.

§ 4. The Rules of the cooperative shall indicate the organ of the cooperative authorized to admit members. Unless the general meeting is such an organ, the Rules shall also indicate the organ to which a decision refusing admission may be appealed and specify the date by which an appeal may be instituted and shall be examined.

Art. 18. A member of the cooperative shall have the right to avail himself of the services of the cooperative within the bounds laid down in the Rules.

Art. 19. § 1. A member of the cooperative shall be obliged to pay the admission fee and the declared shares in accordance with the provisions of the Rules.

§ 2. A member of the cooperative shall participate in covering its losses up to the amount of the declared shares.

§ 3. A member of the cooperative shall not be responsible to the creditors of the cooperative for its liabilities.

Art. 20. § 1. A member of the cooperative shall be obliged to declare one share unless the Rules obligate members to declare a larger number of shares.

§ 2. The Rules may provide for members making contributions which shall be the property of the cooperative or of which the cooperative shall avail itself on the basis of another legal relationship. In such a case, the Rules shall specify the character and scope of the right to the contributions enjoyed by the cooperative, the amount of the contributions and their kind unless these are money contributions, the date of making them, the principles of valuation and return in case of liquidation of the cooperative, a member's withdrawal or termination of membership for other reasons, and also in other cases provided for in the Rules.

Art. 21. A member of the cooperative may not, prior to the termination of membership, demand a return of the payments on account of shares. This, however, shall not apply to payments exceeding the number of shares, the declaring of which is obligatory under the Rules in force on the day such a demand is made. The return of such payments shall take place after the approval of the balance-sheet for the year in which a member made the demand unless his shares have been allocated to cover the losses of the cooperative (art. 19 § 2).

Art. 22. A member of the cooperative may withdraw from it upon a notice. The notice, to be valid, shall be given in written form. The term of notice shall be defined by the Rules. The date of quitting shall be taken to be the next day after the expiry of the term of notice.

Art. 23. § 1. In case of a change of the place of residence and accession in the new place of residence to a cooperative with the same or similar subject matter of activity, a member may withdraw from the cooperative without prior notice and demand the immediate transfer of his shares to the cooperative in the new place of residence.

§ 2. A member withdrawing from the cooperative in the second half of the account year shall participate in its losses sustained in the given year, as though he continued to be its member. However, he shall not participate in the losses sustained in the year in which he acceded to the cooperative.

§ 3. The provisions of the preceding sections shall accordingly apply to a member quitting the cooperative due to a change in the Rules concerning the territory of activity of the cooperative and acceding to another cooperative with the same or similar subject matter of activity.

Art. 24. § 1. The exclusion of a member from the cooperative may take place in case his further membership in the cooperative is, through his fault, incompatible with the provisions of the Rules of the cooperative or the principles of social intercourse. The Rules shall specify in detail the causes of exclusion.

§ 2. A member who fails to meet his statutory obligations through no fault of his may be deprived of membership by striking his name off the register of members of the cooperative. The Rules shall specify in detail the causes of striking off.

§ 3. Exclusion or striking off shall become effective upon delivering to the member a notification of exclusion or of striking off together with justification. The notification shall be effected in written form; a notification returned because the member has failed to notify a change of his address shall have the legal validity of a delivered notification.

§ 4. Exclusion or striking off may be effected, according to the provisions of the Rules, by the supervisory council or the general meeting of the cooperative. The organ adopting a resolution in this matter shall listen to explanations by the member concerned. If the Rules provide for the

competence of the supervisory council in this matter, the member excluded or struck off shall have the right to appeal the resolution on exclusion or striking off to the general meeting and be present during its debates while it examines the appeal and the right to support the appeal. The appellant shall be notified of the date of the general meeting at the address indicated in the appeal at least seven days before the date of the meeting.

Art. 25. § 1. A deceased member shall be struck off the register of members of the cooperative effective as of the day of death. A legal person, member of the cooperative, shall be struck off the register of members effective as of the day of its liquidation.

§ 2. If a deceased member has left more than one successor, the successors shall, with a view to exercising the property rights devolving to them, appoint a common plenipotentiary or indicate an administrator appointed by the court. The provisions of the Civil Code concerning administration of common property shall apply accordingly.

Art. 26. § 1. The share of a former member shall be paid out on the basis of the balance-sheet for the year in which the member ceased to be a member of the cooperative. The payment shall be made within a month from the day of approval of the balance-sheet by the general meeting.

§ 2. A former member shall not have any claim to the resource fund or any other property of the cooperative.

Art. 27. § 1. A member may dispose of his claims to the cooperative for the payment of shares and the return of contributions, or the payment of an equivalent thereof, effective as of the day on which these claims became due.

§ 2. A creditor of a member may obtain satisfaction out of the member's shares only after the termination of the membership of the latter.

§ 3. If execution out of other property of a member proves ineffective and unless a specific regulation provides otherwise, a creditor of a member may demand execution out of the contributions made by the member. In such a case, the claim of a member for return of the contributions or an equivalent thereof shall become due after six months from the day of distraining upon the contributions, unless the claim became due earlier or on the basis of other regulations.

§ 4. In case of distraining by a creditor of a member's contributions constituting means of production, the cooperative shall have priority to purchase them in the course of execution proceedings.

§ 5. The liabilities of the cooperative toward a member on account of payments for shares shall not be subject to distraint for the benefit of the creditors of the cooperative.

Art. 28. In case of commencing liquidation within six months or instituting bankruptcy proceedings within a year from the day on which a member ceased to belong to the cooperative, he shall be obliged to participate in covering the losses of the cooperative, as though he were still a member.

Art. 29. § 1. Claims for the payment of shares, for a share in the balance surplus, and for the return of contributions or a money equivalent thereof shall be subject to three years' prescription.

§ 2. The sums of claims which have been prescribed shall be transferred to the resource fund.

§ 3. The provision of § 1 shall not apply to claims for the return of immovables.

Art. 30. The board of the cooperative shall keep a register of members containing their names and domicile (as regards members being legal persons — their name and seat), the amount of the declared and paid shares, the amount of the contributions made, their kind if these are not money contributions, changes of these details, the date of admission to the cooperative, the date of renunciation and termination of membership, and other details provided for in the Rules. A member of the cooperative, his or her spouse, and a creditor of a member or the cooperative shall be entitled to examine the register.

Art. 31. The board of the cooperative shall furnish each member at his request with a copy of the Rules in force and enable him to get acquainted with regulations enacted on the basis of the Rules.

Art. 32. § 1. A member shall have a right to appeal, within intra-cooperative procedures, resolutions in matters resulting from the relation of membership to the organ of the cooperative indicated in the Rules. The Rules shall determine the principles and mode of intra-cooperative procedures, in particular, the time within which an appeal shall be lodged and examined.

§ 2. The term of instituting an appeal shall begin from the day on which a member was notified of a resolution in the manner indicated in the Act or the Rules of the cooperative. If a written notification is required, this term shall begin from the date of delivery of a notification containing instructions as to the right to appeal from a resolution within the term provided for in the Rules and as to the consequences of a failure to comply with the term.

§ 3. The appellate organ shall examine an appeal instituted after the expiry of the term if the delay does not exceed six months and the appellant has justified it by exceptional circumstances.

§ 4. The cooperative shall deliver to the appellant a copy of the resolution of the appellate organ together with its justification within two weeks from the date of adoption of the resolution.

Art. 33. § 1. After exhausting the intra-cooperative procedures provided for in art. 32 or after an ineffective expiry of the terms laid down in the Rules of the cooperative for the adoption of a resolution by the appellate organ, a member may vindicate his rights resulting from the relation of membership by legal process.

§ 2. Lodging an appeal with the organ of the cooperative shall interrupt

the running of prescription or preclusion until the day of termination of intra-cooperative proceedings, but not for a period longer than a year from the day on which the appellate organ should examine the appeal.

Art. 34. The Rules may extend intra-cooperative procedures also to other matters in relations between a member and the cooperative than those provided for in art. 32 § 1. The provisions of art. 32 and art. 33 § 2 shall accordingly apply to intra-cooperative proceedings in such matters.

#### Chapter IV

##### Organs of the Cooperative

Art. 35. § 1. The organs of the cooperative shall be:

1) general meeting,

2) supervisory council, hereafter called "Council",

3) board,

4) in cooperatives in which the general meeting has been replaced by a meeting of delegates — meetings of groups of members (art. 50).

§ 2. The election to the organs of the cooperative referred to in the preceding section shall be by secret ballot from amongst an unlimited number of candidates. The recalling of a member of the organs of the cooperative shall also be by secret ballot.

§ 3. The Rules may provide for setting up organs other than those mentioned in § 1, composed of members of the cooperative. In such a case, the Rules shall specify the powers of these organs and the principles of election and recalling of their members.

§ 4. Unless the Rules provide otherwise, only votes cast for and against a resolution shall be considered in calculating the majority of votes required for the adoption of the resolution by an organ of the cooperative.

§ 5. The mode of convening meetings of the organs referred to in § 1 points 2—4 and § 3 and the manner and conditions of the adoption of resolutions by these organs shall be defined in the Rules or in the standing orders of these organs provided for in the Rules.

##### DIVISION I GENERAL MEETING

Art. 36. § 1. The general meeting shall be the supreme organ of the cooperative.

§ 2. A member may take part in the general meeting only in person unless the Act provides otherwise. Legal persons, members of the cooperative, shall take part in the general meeting through a plenipotentiary appointed for the purpose. A plenipotentiary may not represent more than one member.

§ 3. Each member shall have one vote irrespective of the number of shares held. The Rules of a cooperative in which membership is open

exclusively to legal persons, may set a different principle of determining the number of votes to which members shall be entitled.

§ 4. Representatives of appropriate central unions and of the Supreme Council shall have a right to participate in general meetings with consultative voice.

Art. 37. § 1. The Rules may provide that if the number of members exceeds a number fixed therein, the general meeting shall be replaced by a meeting of delegates. In such a case, the Rules shall define the principles of fixing the number of delegates and of their election as well as the term of office.

§ 2. The provisions of this Act and of the Rules concerning general meetings shall accordingly apply to meetings of delegates.

§ 3. All members of the cooperative shall be notified of the date, place, and agenda of a general meeting in the manner specified in the Rules.

Art. 38. § 1. The exclusive powers of the general meeting shall include:

adopting the lines of development of economic and socio-educational activity;

2) examining reports of the council, approving annual reports and balance-sheets, and passing resolutions in the question of motions submitted by members of the cooperative, the council, or the board, and giving a vote of approval to the members of the board;

3) passing resolutions in connection with a post-audit evaluation of the activity of the cooperative;

4) passing resolutions in the question of division of the balance surplus or the manner of covering losses;

5) passing resolutions in the question of sale of immovables and sale of an establishment;

6) defining the ceiling on the obligations which the cooperative may incur;

7) passing resolutions in the question of a merger of the cooperative, a division of the cooperative, and an accession of an organizational unit of the cooperative to another cooperative as well as liquidation of the cooperative;

8) examining appeals against resolutions of the council within intra-cooperative proceedings;

9) adopting amendments to the Rules;

10) passing resolutions in the question of accession of the cooperative to a union or withdrawal therefrom; a resolution on withdrawal from a central union shall comprise a provision concerning accession to another central union;

11) authorizing the board to act toward the establishment of a cooperative union;

12) electing delegates to a congress of the union in which the cooperative is associated.

§ 2. The Rules may equip the general meeting with exclusive powers regarding the passing of resolutions also in other matters.

Art. 39. § 1. The general meeting shall be convened by the board at least once a year within six months of the end of the accounting year.

§ 2. The board shall also convene the general meeting at the request of:

1) the council,

2) the appropriate central union,

3) at least one-tenth of the members, but not fewer than three members, unless this right has been reserved in the Rules for a bigger proportion of the membership;

§ 3. In cooperatives in which the general meeting has been replaced by a meeting of delegates, the board shall convene it also at the request of groups of members representing at least one-fifth of the total membership of the cooperative.

§ 4. The request to convene the general meeting shall be submitted in writing and indicate the purpose of its convocation.

§ 5. In cases referred to in § 2 and 3, the general meeting (meeting of delegates) shall be convened at such a date so as it could be held within six weeks from the day of submission of the request. Unless this takes place, the general meeting may be convened by the council or the proper central union.

Art. 40. § 1. The members of the cooperative and the appropriate central union shall be notified of the date, place, and agenda of the general meeting in the manner and at the date specified in the Rules of the cooperative.

§ 2. Those entitled to request the convocation of the general meeting (meeting of delegates) pursuant to art. 39 § 2 and 3 may also request the inclusion of definite matters in its agenda providing they make such a request by the date fixed by the Rules.

Art. 41. § 1. The general meeting may pass resolutions exclusively in manners included in the agenda of the debates as announced to the members in the manner and at the date specified in the Rules.

§ 2. Resolutions shall be passed by a simple majority of votes unless the Act or the Rules require a qualified majority of votes.

§ 3. Minutes shall be drawn up of the general meeting, which shall be signed by the chairman of the general meeting and by other persons indicated in the Rules.

§ 4. The minutes shall be available for inspection to the members of the cooperative. The board shall send a copy of the resolutions of the general meeting to the appropriate central union within a month of the holding of the meeting.

§ 5. The board shall keep the minutes for at least ten years unless regulations concerning the keeping of records provide for a longer time.

Art. 42. § 1. The resolutions of the general meeting shall be binding on all members of the cooperative.

§ 2. A member of the cooperative may appeal any resolution to the court on account of its being inconsistent with the law or the provisions of the Rules.

§ 3. An action for rescinding a resolution of the general meeting shall be brought within six weeks of the date of the general meeting; if the action is brought by a member absent from the general meeting due to irregularities in the convocation of the meeting — within six weeks of the day on which the member learnt of the resolution, but not later than before the lapse of a year from the day of the holding of the general meeting.

§ 4. If the Act or the Rules require that a member be notified of the resolution, the term of six weeks referred to in the preceding section shall run from the day of notification in the manner prescribed in the Rules.

§ 5. The court may take no notice of the expiry of the term referred to in § 3 if upholding a resolution would have especially painful effects for the member while the delay in appealing the resolution is justified by exceptional circumstances and is not excessive.

§ 6. The provisions of the preceding sections shall also apply to a member excluded or struck off the register in the case of appealing a resolution on exclusion or striking off. The right to appeal a resolution on exclusion or striking off shall not be vested in other members of the cooperative.

§ 7. A judgement of the court rescinding a resolution of the general meeting shall have legal force with respect to all members of the cooperative.

Art. 43. § 1. The board of the appropriate central union may appeal to the court a resolution of the general meeting on account of its being inconsistent with the law or the Rules within four weeks of the day of learning of the resolution, but not later than before the lapse of a year from the day of the holding of the general meeting at which the resolution was adopted.

§ 2. The central union may not appeal a resolution of the general meeting deciding of the establishment or termination of membership in the cooperative or directly shaping the individual property rights of a member of the cooperative.

#### DIVISION 2 SUPERVISORY COUNCIL

Art. 44. The council shall exercise control and supervision over the activity of the cooperative.

Art. 45. § 1. The council shall be composed of at least three members elected in accordance with the provisions of the Rules by the general meeting, meeting of delegates, or meetings of groups of members.

§ 2. Only members of the cooperative may be elected to the council. If a legal person is a member of the cooperative, a person indicated by the legal person who is not a member may be elected to the council.

§ 3. If the members of the council are elected by meetings of groups

of members, the number of members of the council elected by the individual meetings shall be in proportion to the number of members of the cooperative grouped in each of these organs.

§ 4. The term of office of the council shall be determined by the Rules.

§ 5. Prior to the expiry of the term of office, a member of the council may be recalled by a two-third majority of votes by the body which has elected him:

§ 6. The cooperative may dismiss a member of the council from work, or change the conditions of work and remuneration, only in cases in which the Labour Code permits such an action with respect to a member of the works trade union authority. This provision shall accordingly apply to members of the council working on a basis other than an employment contract.

Art. 46. § 1. The scope of activity of the council shall include:

- 1) adopting economic plans and programmes of socio-educational activity;
- 2) supervision and auditing of the activity of the cooperative, in particular:
  - a) examining periodical reports and balance-sheets;
  - b) carrying out periodical evaluations of the execution by the cooperative of its socio-economic tasks, with special emphasis on the observance by the cooperative of the rights of members;
  - c) supervision over the manner of settlement by the board of motions submitted by organs of the cooperative and its individual members;
- 3) passing resolutions in the question of purchase and encumbrance of immovables and purchase or sale of an establishment. The Rules may also make contingent the purchase or sale of other fixed assets of a definite kind or value, and the incurring of money obligations in excess of a ceiling determined by the Rules, on a prior resolution of the council; the Rules may also authorize the council to fix this sum:
- 4) passing resolutions in the question of accession to other social and economic organizations and withdrawal therefrom;
- 5) approving the organizational structure of the cooperative;
- 6) examining complaints about the activity of the board;
- 7) submitting to the general meeting reports containing, in particular, results of audits and evaluation of the balance-sheet;
- 8) passing resolutions in the question of legal transactions between the cooperative and a member of the board and representing the cooperative in the course of such transactions; two members of the council authorized by it shall suffice to represent the cooperative.

§ 2. The Rules may reserve still other powers to the council. The Rules may also turn over for the exclusive competence of the general meeting the passing of resolutions in all or some matters referred to in § 1 points 1, 3, and 5; in such a case, the Rules may provide for naming the council "auditing commission".

§ 3. The Rules may provide for the election by the council of its praesidium. In such a case, the Rules may also stipulate that in periods

between the meetings of the council the praesidium shall be empowered to pass resolutions in matters referred to in § 1 point 2 letter c), points 6 and 8 and in matters reserved for the scope of activity of the council on the basis of § 2.

§ 4. With a view to the execution of its tasks, the council may demand from the board, the members and employees of the cooperative any reports and explanations, examine books and documents, and directly check the financial position of the cooperative.

Art. 47. The board of the appropriate central union may appeal a resolution of the council to the court on account of its inconsistency with the law or the Rules. An appeal from a resolution of the council shall interrupt its execution for the duration of the legal proceedings unless the court rules otherwise.

#### DIVISION 3 BOARD

Art. 48. § 1. The board shall direct the activity of the cooperative.

§ 2. The adoption of decisions not reserved in the Act or the Rules for other organs shall be the competence of the board.

Art. 49. § 1. The board shall be composed of at least three members of the cooperative. If a legal person is a member of the cooperative, a person who is not a member, appointed by the legal person, may be elected to the board. The Rules of the cooperative may specify the requirements which a member of the board shall meet.

§ 2. Members of the board, including the chairman and his deputy, shall be elected by the council or the general meeting according to the provisions of the Rules.

§ 3. The organ which elects the members of the board may recall them at any time.

§ 4. The general meeting may recall those members of the board whom it has not granted a vote of approval (art. 38 § 1 point 2) irrespective of which organ elects the members of the board according to the provisions of the Rules. In this case, the provision of art. 41 § 1 shall not apply.

Art. 50. § 1. If the Rules provide so, a member of the board elected by the general meeting may be suspended in his functions by the council in case his activity is inconsistent with the law or the Rules.

§ 2. Suspending a member of the board in his functions, the council shall pass resolutions indispensable for the proper management of the activity of the cooperative and immediately convene the general meeting.

§ 3. A suspended member shall be immediately notified of the suspension in written form, with the reasons for the suspension stated therein.

Art. 51. § 1. If an audit reveals grave violations of the provisions of the law or the Rules in the activity of a member of the board and the proper

organ of the cooperative does not recall him within a period fixed by the appropriate central union, the board of that union may recall him within four weeks of the day of the expiry of the term set for the cooperative.

§ 2. The cooperative and a recalled member of the board may appeal a resolution on the recall to the court within two weeks of the day of delivery of the resolution along with justification. The council shall represent the cooperative before the court.

Art. 52. § 1. The council of the cooperative shall establish with the members of the board employed in the cooperative a relation of employment — depending on the post entrusted — either on the basis of an employment contract or an appointment (art. 68 of the Labour Code). This shall not concern industrial productive cooperatives, in which the members, regardless of the post, shall be employed on the basis of a cooperative employment contract, and those agricultural productive cooperatives in which a relation of membership is the basis of performance of work by members.

§ 2. The recalling or suspension of a member of the board shall not prejudice his rights resulting from the relation of employment or another legal relation, the subject of which is performance of work.

§ 3. In case of recalling a member of the board employed in the cooperative on the basis of an appointment, the right to recall him from his post shall be vested in the board of the cooperative.

Art. 53. § 1. The Rules may provide that the day-to-day economic activity of the cooperative shall be managed, within the framework of the resolutions of the board, by one of the members of the board or a person appointed by the board, subject to the consent of the council, to the post of manager (his deputy) of this activity. The effectiveness of such a provision of the Rules shall be dependent on defining in the Rules matters of essential importance for the cooperative, requiring resolutions of the board. The provisions of the Rules in these matters shall not preclude the powers of the board to pass resolutions in any matters concerning the day-to-day activity of the cooperative.

§ 2. The person managing the day-to-day economic activity of the cooperative shall be the manager of the cooperative as a place of work within the meaning of the Labour Code. Also the person managing a separate organizational and economic unit of the cooperative shall be a manager of a place of work in this meaning.

Art. 54. § 1. Declarations of intent on behalf of the cooperative shall be made by at least two members of the board or one member of the board and a person authorized by the board (plenipotentiary).

§ 2. The declarations referred to in the preceding section shall be made in such a manner that the persons authorized to make them shall place their signatures under the name of the cooperative.

§ 3. Declarations addressed to the cooperative and made on its premises or in writing to one member of the board shall have legal effect with respect to the cooperative.

Art. 55. § 1. The board may empower a member of the board or another person to perform legal acts connected with the day-to-day management of the economic activity of the cooperative (art. 53), or of a separate organizational and economic unit thereof, and also to perform acts of a definite type or special acts.

§ 2. The Rules of the cooperative may make the granting of the powers by the board contingent on the prior consent of the council.

#### DIVISION 4 JOINT PROVISIONS FOR THE COUNCIL AND THE BOARD

Art. 56. § 1. A person may not simultaneously be a member of the council and the board of the same cooperative. In case of necessity, the council may appoint one or several of its members to temporarily act as a member (members) of the board.

§ 2. Members of the board and the council may not take part in a vote on matters concerning exclusively themselves.

Art. 57. The council may not comprise persons mentioned in art. 53 § 2 and persons being a spouse of a member of the board or the manager of the day-to-day economic activity or persons related by blood or marriage in the direct line, and in the collateral line as far as the second degree of relationship.

Art. 58. § 1. A member of the board or the council guilty of an act or shortcoming through which the cooperative has sustained a loss shall be personally liable for it.

§ 2. The provisions of the Labour Code concerning the financial responsibility of employees shall apply to the liability of members of the board and the council. In cases in which these provisions set the upper limit of damages, they shall amount with respect to members of the board or the council not employed in the cooperative to a sum equal to the lowest six-month pay of workers employed in socialized establishments, determined in separate regulations.

#### DIVISION 5 MEETINGS OF GROUPS OF MEMBERS

Art. 59. § 1. In cooperatives in which the general meeting has been replaced by a meeting of delegates, the meetings of groups of members shall also be organs of the cooperative. The Rules shall determine the participation of members in these groups on the basis of residing in a definite area, being employed in the same cooperative establishment, the community of professional interests, or other principles laid down in the Rules. Each member shall participate only in one meeting of a group and be entitled to one vote.

§ 2. The powers of the meetings of groups of members shall include:

- 1) electing and recalling delegates to the meeting of delegates;
- 2) if the Rules so provide — electing and recalling members of the council of the cooperative;
- 3) considering matters which are to be the subject of debates of the forthcoming meeting of delegates and submitting motions in these matters;
- 4) examining periodical reports of the council and the board;
- 5) expressing opinions and submitting motions to the proper organs of the cooperative in cooperative matters, especially in matters concerning all members participating in the meeting of the group.

§ 3. The Rules may also provide for other powers of the meetings of groups of members, especially in the field of making decisions and auditing the appropriate domains of the activity of the cooperative.

§ 4. The organ of the cooperative shall consider an opinion or motion referred to in § 2 point 5 and notify the appropriate meeting of a group of members of the manner in which it was utilized.

§ 5. The meetings of groups of members shall be convened at the dates fixed in the Rules, at least before the annual meeting of representatives.

## Chapter V Employee Self-Management

Art. 60. § 1. Employee self-management shall function in organizationally and economically independent establishments of cooperatives employing at least 50 people, except establishments of industrial productive cooperatives and of those agricultural productive cooperatives in which membership is the basis of performance of work by members.

§ 2. The task of employee self-management shall be to cooperate with the management of the establishment in directing its activity with a view to the full utilization of its possibilities in the field of production and services and in order to ensure a just sharing by employees in the economic results of the establishment.

Art. 61. § 1. The organs of employee self-management shall be:

- 1) general meeting of employees of the establishment;
- 2) works committee of employees

§ 2. In an establishment in which the number of employees exceeds three hundred, the functions of the general meeting of employees shall be performed by a meeting of delegates elected for a period of two years by meetings of groups of employees.

Art. 62. § 1. The tasks of the general meeting of employees of the establishment shall be:

- 1) adopting the rules of employee self-management;
- 2) election of members of the works committee of employees
- 3) expressing opinions on drafts plans for the development of the establishment;
- 4) expressing opinions on draft principles of fixing the amount of

bonuses and rewards connected with the results of the economic activity of the cooperative.

5) determining the principles and plans of management of means for social purposes allocated to the employees of the establishment;

6) carrying out an annual evaluation of the activity of the works committee and the manager of the establishment;

7) considering other matters concerning the activity of the establishment and the rights and duties of its personnel on its own initiative, on the motion of the organs of the cooperative, the manager of the establishment, or the employees committee.

§ 2. The general meeting of employees shall be convened by the works committee of employees according to the needs, at least once a year, on its own initiative, or the motion of the board or the council of the cooperative, and also of one-third of the employees. Each employee shall have a right to participate in the meeting.

§ 3. The meeting shall pass resolutions by a simple majority of votes in an open ballot, except in cases provided for in the Act or the rules of employee self-management.

Art. 63. § 1. The tasks of the works committee of employees shall include:

1) expressing opinions on the annual plan of the economic activity of the establishment;

2) expressing opinions on the plans of creation and liquidation of social, cultural-educational, and sport centres and facilities for the employees of the cooperative and submitting motions in these matters;

3) adopting regulations of work and work emulation on the motion of the manager of the establishment and in consultation with the trade unions functioning in the establishment;

4) expressing opinions about candidates for the post of manager of the establishment and submitting motions for his dismissal; a person whose candidacy is opposed by the committee may not be appointed to the post of manager;

5) cooperating with the manager of the establishment in defining the ways of execution of the tasks of the establishment, resulting from the plan of economic activity of the cooperative;

6) participation, through the intermediary of its representatives, in meetings of the council of the cooperative, at which the affairs of the establishment are to be discussed, and in general meetings of cooperatives with consultative voice;

7) performing other functions if the Rules of the cooperative grant the committee such powers.

§ 2. The works committee of employees shall have a right to supervise the whole of the activity of the establishment. The manager of the establishment shall be obliged to make available the documents and materials indispensable to exercise supervision.

Art. 64. § 1. Members of the works committee of employees shall be elected by secret ballot from amongst the employees who have worked in the cooperative for at least one year, excluding members of the board of the cooperative, the manager of the establishment, his deputies, the chief accountant, and the legal counsel. Each employee (delegate) shall have a right to propose candidates for members of the committee. The requirement of one year of service shall not apply to newly organized establishments.

§ 2. A member of the works committee of employees shall retain the right to remuneration for periods of absence from work on account of performing his function during working hours.

§ 3. The termination by the employer of an employment contract with a member of the works committee of employees during the term of office of this committee shall require the consent of the committee. Also, the cooperative may not, without the consent of the committee, change during this time the conditions of work or pay of a member of the committee to his disadvantage. These provisions shall not affect regulations concerning termination of employment contracts without notice.

Art. 65. § 1. The detailed principles of organization of employee self-management, the composition and mode of activity of its organs, their term of office, and the principles of holding elections shall be defined by the rules of the employee self-management.

§ 2. The first general meeting of employees of the establishment shall be convened by the manager of the establishment.

## Chapter VI

### Amendments to the Rules of the Cooperative

Art. 66. § 1. An amendment to the Rules of the cooperative shall require a resolution of the general meeting, passed by a three-fourth majority of votes.

§ 2. An amendment to the Rules concerning the subject matter or the territory of activity shall require a statement of purposefulness. The provisions of art. 6 § 3, 4, and 5 shall apply accordingly.

§ 3. The board shall be obliged to report a resolution on an amendment to the registration court within a month from the day of its adoption or the obtainment of a statement of purposefulness, enclosing two copies of the minutes of the general meeting and, in the case referred to in the preceding section, also a statement of purposefulness of the amendments introduced. In case of a refusal to issue a statement of purposefulness, the provisions of art. 9 shall apply accordingly.

§ 4. An amendment to the Rules shall not have legal effect prior to its entry into the register.

Art. 67. The cooperative shall conduct economic activity on the basis of economic accounting, ensuring benefits to the members of the cooperative. The activity of the cooperative shall be financed out of its own funds, which may be supplemented by bank credits and other financial resources.

Art. 68. The cooperative shall be liable for its obligations with all its property.

Art. 69. The cooperative shall conduct economic activity on the basis of plans elaborated independently. These plans shall, according to the provisions of the Rules, be adopted by the general meeting or the council of the cooperative.

Art. 70. The proper people's councils and organs of state administration shall cooperate with cooperatives in the execution of their socio-economic tasks and extend appropriate assistance to them, in particular, to youth cooperatives.

Art. 71. § 1. The proper organ of state administration shall have a right to impose on the cooperative the obligation to introduce tasks into the plan or assign unplanned tasks if this is indispensable because of the demands of defence of the country or in case of a natural calamity.

§ 2. In the case referred to in the preceding section, the proper organ of state administration shall provide the cooperative with means indispensable to carry out the imposed task.

§ 3. The execution of the task shall take place on the basis of an agreement concluded between the cooperative and the organizational unit indicated in imposing the task.

§ 4. In case of sustaining a loss in the course of execution of a decision of the organ referred to in § 1, the cooperative may claim damages from this organ. Disputes over this issue shall be resolved by the court.

Art. 72. § 1. If the cooperative undertakes, on the basis of an agreement with an organ of state administration, unprofitable activity to satisfy indispensable social needs, the organ shall be obliged to provide financial and other means indicated in the agreement to make possible the conducting of this activity on the principle of profitability.

§ 2. Disputes resulting from agreements referred to in the preceding section shall be resolved by the court.

Art. 73. The cooperative may obtain subsidies from the state budget to finance the production of goods and the rendering of services up to the amount fixed in the Budget Act.

Art. 74. § 1. The Minister of Finance may, on the request of the appropriate central union, grant allowances to youth cooperatives.

§ 2. The youth cooperative shall be taken to be a cooperative organized by the youth, the Rules of which provide for allocating a part of the balance surplus to finance the statutory activity of a youth organization.

Art. 75. The lawful profit of the cooperative, after deducting the income tax and taking into account its share in the financial result of other organizations, shall constitute the balance surplus.

Art. 76. § 1. The balance surplus shall be divided on the basis of a resolution of the general meeting. At least 20 per cent of the balance surplus shall be allocated for increasing the resource fund. In justified cases, upon the application of the cooperative, the appropriate central union may consent to a lowering of the allocation for the resource fund.

§ 2. The congress of delegates of the central union shall determine the amount of payments out of the balance surplus to the development fund created at the central union and destined for extending aid to the associated cooperatives and taking up tasks facilitating their activity.

Art. 77. § 1. The part of the balance surplus left after making the payments referred to in the preceding article shall be allocated for purposes defined in the resolution of the general meeting, notably for creating and increasing the special-purpose funds of the cooperative, for division among the members, for bonuses and rewards to the members and employees of the cooperative, and for socio-educational activity, social and housing purposes. The payments out of the part of the balance surplus for bonuses and rewards to the employees, and in industrial productive cooperatives also to members on account of a contribution of labour, shall not be included in the basis for calculating the tax on pay and social insurance contributions.

§ 2. If the division of the part of the balance surplus among the members is to be effected in the form of an interest on shares, the rate of interest may not exceed by more than 50 per cent the highest rate of interest on personal fixed-term savings deposits.

Art. 78. § 1. The cooperative shall create the following funds:

- 1) the share fund, made up of payments of member's shares;
- 2) the resource fund, made up of payments by members of the admission fee, a part of the balance surplus, property received free of charge, and prescribed or precluded liabilities. The resource fund shall be increased by the value of fixed and other assets financed out of the funds of the cooperative for investments and decreased by the fixed and other assets liquidated or sold, and also by depreciation. Moreover, the resource fund shall be increased or decreased by sums resulting from a revaluation of the property in its part which is not accounted for to the budget.

§ 2. The cooperative shall also create the housing and social funds on principles laid down in the regulations governing the finances of state enterprises. The cooperative may allocate a part of the social fund for financing joint undertakings conducted by the union of which it is a member.

Art. 79. § 1. Writings off for depreciation from fixed assets and other values and receipts from the sale or liquidation of fixed assets shall be allocated for financing investments and for the repayment of investment credits. These resources shall be accumulated in a separate bank account. Free investment means may be temporarily allocated for financing current economic activity.

§ 2. The fixed assets serving the social activity of the establishment and the dwelling houses owned by the establishment as well as the related assets shall not be subject to depreciation.

Art. 80. The cooperative may create a fund of technological-economic progress which is included in the costs of its activity or include the expenditures for this purpose in its costs.

Art. 81. The cooperative may create other funds; the creation of funds included in the costs of activity of the cooperative shall require the consent of the Minister of Finance.

Art. 82. Running repairs and overhauls shall be included in the costs of activity of the cooperative. The costs of overhauls may be spread over a period of time.

Art. 83. § 1. The contributions by the cooperative toward the execution by the proper central union of its tasks shall be included in the costs of its activity. These contributions shall be paid by the cooperative direct to the central union.

§ 2. The provision of the preceding section shall accordingly apply to the contributions by the cooperative toward the execution of the tasks of other unions, to which the cooperative has acceded.

Art. 84. The cooperative shall transfer to the budget an equivalent of the change of the value of reserves, or of a part thereof, resulting from a revaluation caused by a change of official or regulated prices.

Art. 85. The cooperative shall independently determine the amount of means for pay within its financial possibilities, according to the requirements of its activity, applying the provisions of the Labour Code, the regulations concerning remuneration, and the provisions of the appropriate collective agreements.

Art. 86. The cooperatives producing goods or services for export and those conducting import activity shall enjoy the rights provided for in regulations on the finances of state enterprises.

Art. 87. § 1. The rights and duties of the chief accountants of cooperative organizations shall be defined by the Council of Ministers by way of an order issued after consulting the central cooperative unions.

§ 2. The cooperative shall keep the accounts on the general principles laid down by the Minister of Finance after consulting the central unions.

Art. 88. § 1. The annual balance-sheet of the cooperative shall be subject to verification in terms of honesty and correctness by auditors or specialists authorized by the appropriate central union.

§ 2. The principles of checking the honesty and correctness of the annual balance-sheet of the cooperative and of the ensuing financial result shall be laid down by the appropriate central union.

§ 3. The provision of § 1 shall also apply to balance-sheets constituting the basis for accounting in case of a merger or division of the cooperative or accession of an organizational unit of the cooperative to another cooperative. This shall also concern the list of the components of property and the rights and obligations subject to transfer in case of a division of the cooperative or accession of an organizational unit of the cooperative to another cooperative.

Art. 89. The annual report, together with an account of the results, shall be laid out on the premises of the cooperative at least fourteen days before the date of the general meeting at which they are to be examined. Each member shall have a right to inspect and copy them.

Art. 90. § 1. The balance losses of the cooperative shall be covered out of the resource fund, and in their part exceeding the resource fund — out of the share fund and other funds of the cooperative, in the order determined by the Rules. The losses incurred in the first year after the foundation of the cooperative may be covered in the next year.

§ 2. If the funds of the cooperative do not suffice to cover the losses, the general meeting may pass a resolution obligating members to pay in shares earlier than provided for by the Rules.

## Chapter VIII

### Auditing

Art. 91. § 1. The activity of the cooperative shall be subject to audits by the proper central union, carried out by the auditor. Authorization to perform auditing functions shall be granted to the auditor by the central union. The Supreme Council, upon the motion of the central union, may withdraw the authorization from the auditor.

§ 2. The aim of auditing shall be to examine the legality, honesty and frugality in the activity of the cooperative. Audits may embrace the whole of the activity of the cooperative, some area thereof, or definite matters (questions).

Art. 92. § 1. The auditor shall notify the council and the board of the beginning of the audit. Members of the council shall have a right to participate in the audit.

§ 2. The auditor shall be empowered to examine the books and all documents in the cooperative being audited and to check its financial standing,

and the organs of the cooperative and all its employees shall be obliged to offer him the required explanations and all assistance.

Art. 93. § 1. The auditor shall draw up a report on his auditing activity and submit a copy of the report to the council and the board of the cooperative. The reports drawn up by the auditor according to the requirements set by the proper central union shall have the force of official documents.

§ 2. The board of the cooperative, at the request of a member of the cooperative, shall be obliged to make the report on the audit available to him for inspection.

§ 3. On the basis of the results of the audit, the appropriate central union shall evaluate the activity of the cooperative and issue recommendations in which it shall define the manner and the date of repairing the irregularities and shortcomings discovered.

§ 4. The evaluation of the activity of the cooperative and the post-audit recommendations issued on its basis — after they have been examined by the council and an appropriate resolution has been passed — shall be presented to the next general meeting along with a report on the realization of the recommendations.

Art. 94. The appropriate central union may authorize an expert to carry out a partial audit in collaboration with an auditor.

Art. 95. Detailed instructions concerning the types (scope) of audits, the frequency of carrying out the full audit, the duties of the auditor, the manner of carrying out the audit and of drawing up the posts-audit report shall be issued by the appropriate central union.

## Chapter IX

### Merger of Cooperatives

Art. 96. The cooperative may at any time merge with another cooperative on the basis of resolutions of the general meetings of the merging cooperatives passed by a two-third majority of votes.

Art. 97. The resolutions on merger shall contain:

- 1) the name of the receiving cooperative;
- 2) the Rules providing the basis for its further activity;
- 3) the date of merger.

Art. 98. § 1. The accounting basis for merger shall be furnished by the balance-sheets of the merging cooperatives drawn up at the end of the account year or half-year. The checked balance-sheets shall be presented to the general meetings prior to the adoption of resolutions on merger. These meetings shall be convened immediately after the balance sheets of the merging cooperatives have been checked.

§ 2. Unless the general meetings of the merging cooperatives decide other-

wise, the division of the surplus shall be effected separately, according to balance-sheets for the day of merger.

Art. 99. Merger and the resultant changes in the Rules shall have effect as of the day of their entry into the register, with the exception provided for in art. 102 § 1.

Art. 100. Members who at the moment of merger belonged to the received cooperative shall become members of the receiving cooperative. Payments on account of shares shall be credited to members of the received cooperative at the amount which results from the sum of the received share fund determined in the balance-sheet.

Art. 101. In effect of merger, the property of the received cooperative shall be transferred to the receiving cooperative, and the creditors and debtors of the former shall become creditors and debtors of the latter.

Art. 102. § 1. Immediately after the adoption of resolutions on merger, the board and council of the received cooperative shall be replaced by the board and council of the receiving cooperative.

§ 2. The board of the receiving cooperative shall be obliged to immediately notify the resolution of merger to be entered into the registries of the merging cooperatives. Changes in the Rules resulting from merger of cooperatives shall not require a statement of purposefulness.

§ 3. If the resolutions of the general meetings on merger so provide, the cooperative shall, immediately after the entry of the merger into the register, elect the board and the council.

## Chapter X

### Accession of an Organizational Unit of the Cooperative to Another Cooperative

Art. 103. § 1. Members of the cooperative whose property rights and obligations are connected with an organizationally independent unit of the cooperative may decide, at a meeting (meetings) specially convened for the purpose, by a two-third majority of votes, to ask the general meeting of the cooperative to pass a resolution on the accession of this unit to another cooperative with the same or similar subject matter of activity and on the transfer of a part of members to that cooperative. Such a meeting (meetings) shall be convened by the board of the cooperative on its own initiative, on the motion of another organ of the cooperative or of one-third of the members concerned.

§ 2. Accession shall require resolutions of the general meetings of the receiving and the transferring cooperative. The resolutions shall contain

- 1) the names of the receiving and the transferring cooperative;
- 2) the list of members or the indication of groups of members passing over to the receiving cooperative;

3) approval of the accounting basis for accession;

4) the date of accession.

§ 3. Accession may not lessen the property rights acquired by members

Art. 104. The account basis for the accession of an organizational unit shall be furnished by its balance-sheet, and if it does not have its own balance sheet, a list of components of property and of rights and obligations to be received. The checked balance-sheet or list shall be presented to the general meetings of both cooperatives prior to the adoption of resolution on accession.

Art. 105. If, in effect of accession, a change is introduced in the Rule which concerns exclusively the territory of activity, the general meeting may adopt this change by a simple majority of votes.

Art. 106. § 1. The boards of the receiving and the transferring cooperative, immediately after the general meeting of these cooperatives have adopted resolutions on accession, shall submit motions for making entries about accession in the register. The motions shall include transcripts of the resolution of the general meetings on accession, and if the accession resulted in an amendment to the Rules of the cooperative — also a transcript of the resolution on this amendment. Amendments to the Rules resulting from accession of an organizational unit shall not require a statement of purposefulness.

§ 2. Upon making in the register the entries referred to in the preceding section, the receiving cooperative shall enter into the relations resulting from employment contracts concluded between the transferring cooperative and the employees passing over to the receiving cooperative. If an employee terminates the employment contract within a month from the day of making these entries, the dissolution of the employment in effect of this termination shall have such consequences which the provisions of the law connect with the dissolution of the contract by the employer by way of termination with the reservation resulting from § 3.

§ 3. An employee obliged, in connection with the dissolution of the employment contract in the manner provided for in the preceding section, to vacate a dwelling owned by the employer, shall not be entitled to a replacement.

Art. 107. The appropriate provisions of art. 100 and 101 shall apply to accession, except that both cooperatives shall be jointly responsible to creditor for obligations accepted.

## Chapter XI

### Division of the Cooperative

Art. 108. § 1. The cooperative may divide, on the basis of a resolution of the general meeting, passed by a two-third majority of votes, in such a way that the separated part forms a new cooperative.

§ 2. The resolution on the division of the cooperative shall contain:

1) the name of the original cooperative and or the cooperative formed in effect of the division;

2) the list of members or the indication of groups of members passing over to the newly established cooperative;

3) approval of the balance sheet of the cooperative and of the plan of division of property components and of rights and obligations;

4) the date of division of the cooperative.

Art. 109. § 1. Immediately after the adoption by the general meeting of a resolution on the division of the cooperative, a meeting of members passing over to the new cooperative, and if the resolution on the division of the cooperative has been passed by the meeting of delegates — a meeting of the delegates who are passing over as members to the new cooperative, shall:

1) adopt the Rules of the new cooperative; the Rules may not lessen the property rights acquired by members;

2) elect those organs of the cooperative which, in keeping with the adopted Rules, shall be elected by the general meeting.

§ 2. The adoption of the resolutions referred to in the preceding section shall require a simple majority of votes.

§ 3. If the number of members passing over to the new cooperative is smaller than the number of members required by the Rules of the original cooperative for replacing the general meeting with the meeting of delegates, the resolutions referred to in § 1 shall be adopted, within a month from the day of the adoption of the resolution on the division of the cooperative, by a meeting of members passing over to the new cooperative. The meeting shall be convened by the board of the original cooperative, notifying the interested members in writing of the date of the meeting and its agenda.

Art. 110. § 1. The board of the original cooperative, within seven days from the adoption of the Rules of the new cooperative, shall request the appropriate central union to issue a statement of purposefulness of the foundation of the new cooperative. The provisions of art. 6 § 3—6 shall apply accordingly.

§ 2. If the board of the new cooperative has not been elected yet, the election shall be held immediately after the issuance of the statement of purposefulness referred to in § 1.

§ 3. The board of the new cooperative, within fourteen days of receiving the statement of purposefulness, shall submit an application for entering the cooperative into the register, and the board of the original cooperative — an application for making in the register an entry about the division. One transcript of the resolution of the general meeting and the statement of purposefulness shall be enclosed to each of these applications. Moreover, the provisions of art. 7 § 2 and 3 and art. 8 shall accordingly apply to the application for entering the new cooperative into the register. In case of the refusal to issue a statement of purposefulness, the provisions of art. 9 shall apply accordingly, except that the application shall be submitted within fourteen days.

Art. 111. In effect of the division of the cooperative, the new cooperative, upon its registration, shall acquire the property components and rights and obligations resulting from the plan of division. To this extent, the creditors and debtors of the original cooperative shall become creditors and debtors of the new cooperative. However, the previous and the new cooperative shall be jointly responsible for liabilities which arose before the division of the cooperative.

Art. 112. The provisions of art. 100, 105, 106 § 2 and 3 shall accordingly apply to the division of the cooperative.

## Chapter XII

### Liquidation of the Cooperative

Art. 113. § 1. The cooperative shall go into liquidation:

1) after the lapse of the period for which, according to the Rules, the cooperative has been founded;

2) in effect of a decrease of the number of members below the number indicated in the Rules or the law unless the cooperative raises the number of members up to the required number by the date set by the appropriate central union;

3) in result of concordant resolutions of the general meetings passed by a three-fourth majority of votes at two consecutive general meetings held at an interval of at least two weeks.

§ 2. In the cases referred to in the preceding section, the board of the cooperative (the liquidator) shall report the beginning of the liquidation to be entered into the register and notify of this the proper central union. Unless the board does so, the proper central union shall report the liquidation and appoint liquidators.

Art. 114. § 1. The board of the appropriate central union may adopt a resolution on the cooperative going into liquidation if:

1) the activity of the cooperative shows blatant and persistent violations of the provisions of the law or the Rules;

2) the cooperative has not conducted economic activity for at least a year.

§ 2. The cooperative may appeal the resolution of the board referred to in the preceding section to the court within six weeks of the day of its delivery together with justification. In case the resolution has not been appealed within the prescribed period or if a decision on dismissing the appeal or quashing the proceedings has become final, the appropriate central union shall report the opening of liquidation to be entered into the register and appoint the liquidator.

Art. 115. Unless the cooperative has commenced economic activity within a year from the day of its registration and if it does not possess property,

may be struck off the register on the motion of the proper central union without liquidation proceedings.

Art. 116. § 1. A cooperative put in liquidation on the basis of art. 113 § 1 point 3 may, before the lapse of a year from the day of the adoption of the second resolution of the general meeting on liquidation, restore its activity on the basis of a resolution of the general meeting passed by a three-fourth majority of votes.

§ 2. The board or the liquidator shall immediately report the resolution on the restoration of the activity of the cooperative to be entered into the register, enclosing a transcript of the minutes of the general meeting. The court shall announce the entry in the *Monitor Spółdzielczy*.

Art. 117. A cooperative in liquidation may merge with another cooperative on principles provided for in art. 96—102.

Art. 118. § 1. The liquidators of the cooperative may be members of the last board or persons elected by the general meeting unless the law provides otherwise.

§ 2. The liquidator need not be a member of the cooperative. A legal person may also be the liquidator.

§ 3. The council of the cooperative shall conclude a contract with the liquidator on performing the liquidation functions. In case the governing of the council encounters serious difficulties or when the liquidator has been appointed by the proper central union, the contract with the liquidator shall be concluded by that union, acting on behalf of the cooperative.

Art. 119. § 1. The regulations concerning members of the board of the cooperative shall accordingly apply to the liquidator unless the regulations on liquidation provide otherwise.

§ 2. The liquidator may not transact new business unless this is necessary for liquidation. The organ which has appointed the liquidator may impose further restrictions upon him. Such restrictions shall be immediately reported by the liquidator to be entered into the register.

§ 3. If the convening of the general meeting or the council of the cooperative encounters serious difficulties, the proper central union may authorize the liquidator to perform functions of a definite kind which require a resolution of the council or the general meeting of the cooperative.

§ 4. The liquidator may be recalled at any time by the organ which has appointed him. Moreover, the liquidator may be recalled for important reasons by the central union.

§ 5. The organ which has recalled the liquidator shall simultaneously appoint another one.

§ 6. In case of recalling the liquidator, the provision of art. 51 § 2 shall apply accordingly.

Art. 120. The powers granted previously and subject to entry into the register shall expire as of the day of entering the opening of liquidation into the register.

Art. 121. § 1. A cooperative in liquidation shall retain its previous name with the addition of the words: "in liquidation".

§ 2. A legal person appointed as liquidator shall perform legal acts on behalf of the cooperative, observing the regulations governing the performance of legal acts by that person.

Art. 122. The liquidator, immediately after his appointment, shall

1) submit an application for entering the opening of the liquidation of the cooperative into the register, if this has not been done yet, and notify of this the proper central union;

2) notify the banks financing the cooperative and the proper financial organs of the opening of the liquidation of the cooperative;

3) post in *Monitor Spółdzielczy* an announcement about the opening of the liquidation of the cooperative and call on the creditors to make claims within six months of the day of the announcement;

4) proceed to drawing up the balance sheet as of the day of the opening of the liquidation and the list of liabilities of the cooperative;

5) draft the financial plan of the liquidation and the plan for meeting the liabilities.

Art. 123. During liquidation, the provisions of art. 23 and 90 § 1 shall not apply.

Art. 124. § 1. The liquidator shall notify the creditor in writing of the refusal to satisfy the claims made within four weeks of the day of making the claims.

§ 2. The running of prescription or preclusion shall be interrupted for the period referred to in the preceding section.

§ 3. The admission by the liquidator of a claim made shall interrupt the running of prescription and preclusion also in arbitration proceedings if the claim has been admitted in writing.

Art. 125. § 1. The dues of the cooperative shall be paid in the following order:

1) the costs of the liquidation;

2) the dues resulting from the relation of employment and the dues to which the provisions of the law extend the same protection as to the dues from the relation of employment, as well as damages on account of an injury, derangement of health, or death, including damages on account of accidents at work and occupational diseases;

3) dues and other dues to which the regulations concerning liabilities are applicable, and dues on account of bank credits.

4) other dues.

§ 2. If dues are not yet claimable or are disputed, the sums necessary to meet them shall be deposited with the court.

§ 3. Out of the sums left after paying all the dues and depositing with the court sums securing in full the dues disputed or not yet claimable, the

proportional payment of shares shall be effected however, the payment may not be made before the lapse of six months from the day of the announcement summoning creditors.

§ 4. Creditors who have made their claims after the lapse of this period may vindicate them out of the still undivided property of the cooperative.

§ 5. The remaining property of the cooperative shall be destined for cooperative purposes or social purposes, according to the resolution of the last general meeting of members.

Art. 126. § 1. After completing the liquidation, the liquidator shall submit to the general meeting for approval the balance-sheet for the day of completion of the liquidation.

§ 2. If the convening of the general meeting encounters serious difficulties, the liquidator shall present the balance-sheet for approval to the proper central union.

§ 3. Following the approval of the balance-sheet for the day of completion of the liquidation, the liquidator shall submit an application for striking the cooperative off the register and turn over the books and documents of the liquidated cooperative for safekeeping. The striking off shall be announced by the court.

Art. 127. If all the dues of the cooperative have been paid and sums securing disputed and non-claimable dues deposited, the cooperative may be struck off the register prior to the conclusion of litigation conducted by it or against it in courts of law or courts of arbitration. In such a case, the cooperative as a litigant shall be replaced by the appropriate central union, which shall spend the sums of money obtained in effect of the litigation in accordance with the resolution of the general meeting of the cooperative.

Art. 128. § 1. After the cooperative has been struck off the register, the liquidator shall be responsible to the creditors of the cooperative for the damages caused to them in result of his failure to fulfill his legal obligations.

§ 2. The provisions of the preceding section shall accordingly apply to members of the last board of a cooperative which has been struck off the register in the mode defined in art. 115.

Art. 129. The Minister of Justice, in consultation with the Minister of Science, Higher Schools, and Technology, shall define, by way of an order, the manner and period of time of keeping the books and documents of liquidated cooperatives.

### Chapter XIII

#### Bankruptcy of the Cooperative

Art. 130. § 1. The cooperative shall be declared bankrupt in case of its insolvency.

§ 2. If, according to the balance-sheet of the cooperative, the total value of its assets does not suffice to meet all its obligations, the board shall immediately convene the general meeting, the agenda of which shall include the question of the further existence of the cooperative.

§ 3. In spite of the insolvency of the cooperative, the general meeting may pass a resolution on the continued existence of the cooperative if it indicates the means enabling the cooperative to regain solvency.

§ 4. In case the general meeting passes a resolution on the bankruptcy of the cooperative, the board of the cooperative shall immediately submit a petition to the court for declaring bankruptcy.

Art. 131. The petition to declare the bankruptcy of a cooperative under liquidation shall be submitted to the court by the liquidator immediately after ascertaining the insolvency of the cooperative.

Art. 132. § 1. The petition to declare the bankruptcy of the cooperative may also be submitted by the proper central union and by persons in whom this right is vested by virtue of the provisions of the bankruptcy law.

§ 2. The court, at the request of the proper central union or the creditor, may declare a cooperative bankrupt despite a resolution of the general meeting on the further existence of the cooperative.

Art. 133. If the balance sheet drawn up by the board or the liquidator demonstrates that the property of a cooperative which has ceased its activity does not suffice to meet the costs of bankruptcy proceedings and the creditors refuse to meet these costs, the court, at the request of the proper central union, shall order the striking of the cooperative off the register, notifying the creditors of this. In such a case, bankruptcy proceedings shall not be conducted, and the remaining property of the cooperative shall be destined for cooperative purposes or social purposes according to the decision of the proper central union.

Art. 134. The provisions concerning the organs of the cooperative shall also be applicable during bankruptcy proceedings unless the provisions of the bankruptcy law stipulate otherwise.

Art. 135. Following the declaration of bankruptcy, the members of the cooperative, at the request of the trustee in bankruptcy, shall immediately pay the outstanding part of the shares.

Art. 136. Following the completion of bankruptcy proceedings, the trustee in bankruptcy shall submit to the registration court a petition for striking the cooperative off the register.

Art. 137. In matters not regulated by this Act, the provisions of the bankruptcy law shall apply to bankruptcy proceedings.

**TITLE II**  
**SPECIFIC PROVISIONS FOR AGRICULTURAL PRODUCTIVE**  
**COOPERATIVES, COOPERATIVES OF AGRICULTURAL CIRCLES,**  
**INDUSTRIAL PRODUCTIVE COOPERATIVES, AND HOUSING**  
**COOPERATIVES**

**Chapter I**  
**Agricultural Productive Cooperatives**

**DIVISION I**  
**FARMING COOPERATIVES**

**Sub-division 1**  
**Subject Matter of Activity and Membership**

Art. 138. § 1. The subject matter of economic activity of the farming cooperative shall be to run the collective farm on the basis of personal work of members.

§ 2. Apart from the activity referred to in the preceding section, the farming cooperative may conduct productive and servicing activity within the scope envisaged in the Rules.

Art. 139. § 1. Membership in the cooperative shall be open to farmers who are:

- 1) owners or independent possessors of farmland,
- 2) leasees, users, and other dependent possessors of farmland.

§ 2. Also other persons having qualifications useful for work in the cooperative may be members of the cooperative.

§ 3. At least five of the founding members shall meet the requirements referred to in § 1 point 1.

Art. 140. The right to admit, exclude, and strike off members shall be vested in the general meeting.

**Sub-division 2**  
**Money and Land Contributions**

Art. 141. § 1. The Rules of the cooperative shall provide that a member who possesses land shall bring it in full or in part as a contribution to the cooperative.

§ 2. By land contribution shall be meant the land and buildings, or parts thereof, and other facilities durably connected with the land, to be found on this land upon its being contributed.

§ 3. The bringing in of a land contribution by a dependent possessor shall require the consent of the owner.

Art. 142. § 1. A member who has brought in as a land contribution the

whole of the land possessed shall be entitled to a plot of land. The Rules shall determine the size of the plots and the manner of delimiting them.

§ 2. The Rules may provide that a member shall be entitled to a plot of land also in cases other than that referred to in § 1.

Art. 143. The cooperative shall use the land contributions against payment. The Rules shall lay down the principles of payment for the use of these contributions.

Art. 144. § 1. The land brought in as contributions shall be appraised on the principle of comparative estimation of its use value.

§ 2. Buildings and other facilities constituting contributions shall be appraised in money according to the condition and the prices as of the day of contribution.

Art. 145. § 1. Unless the Rules or an agreement with a member provide otherwise, the cooperative shall acquire the right to use the land contributed by the member upon accepting the contribution.

§ 2. The use by the cooperative of the land contributed by the member shall be regulated by the provisions of the Civil Code.

Art. 146. An agreement between the cooperative and the member may exclude from use by the cooperative buildings and other facilities durably connected with the land contributed and the plot of land indispensable to utilize them.

Art. 147. § 1. A member who is the owner of the land constituting his contribution may dispose of this land by acts between living persons or in case of death. However, he shall notify the cooperative of the transfer of the ownership of land to a person who is not a member of the same cooperative at least three months prior to performing this act.

§ 2. In case of the transfer of the ownership of contributed land against payment, the cooperative shall enjoy the right of preemption. This shall not apply to cases of the transfer of the ownership of the contribution to another member of the same cooperative.

§ 3. The land transferred to another member of the same cooperative shall enhance the contribution of the buyer.

Art. 148. § 1. A member may withdraw his land contribution only after the termination of his membership.

§ 2. If the Rules provide for the obligation to contribute only a part of the land possessed, a member may, during his membership, withdraw on a notice part of his land contribution in excess of the amount required by the Rules.

§ 3. A member who withdraws his contribution receives the same land which he has contributed if the demands of collective farming do not intervene. Otherwise, he shall receive equivalent land with due consideration to the interests of both sides.

§ 4. In case there exists a difference in the area or value of the land returned, the sides shall settle their accounts according to the market prices as of the day of settlement.

§ 5. The provisions of the preceding sections shall accordingly apply to buildings and other facilities constituting contributions, with account being taken in favour of the cooperatives of the degree of their normal depreciation as a result of use in conformity with their purposes.

Art. 149. In case land has been contributed by an independent possessor and by the time of termination of membership, has not been usucapted, an equivalent plot shall be the object of the further usucaption.

Art. 150. § 1. The Rules shall determine the date and period of termination of membership and also the date of withdrawal of the land contribution and of the final settlement of the accounts between the sides in case of the termination of membership for any reasons whatever.

§ 2. The Rules shall likewise determine the date of notice of withdrawal of a part of the land contribution during membership and the date of withdrawal of this contribution and of the final settlement of the accounts between the sides.

Art. 151. The legal successors of a member as well as the owners, who are not members, of the land contributed to the cooperative with their consent may withdraw the land contribution according to the principles pertaining to a member who has renounced membership.

Art. 152. § 1. The Rules of the cooperative may obligate members to make a definite money contribution. On account of such a contribution, the cooperative may accept means of production, such as livestock, fodder, sowing material, equipment, machines, and tools useful in the collective farm. These means shall be subject to appraisal according to their condition and at prices as of the day of contribution.

§ 2. The money contribution as well as the means of production contributed on its account shall be converted, according to the official purchase prices, into quintals of rye.

§ 3. The money contribution shall bear interest. The Rules shall determine the rate of interest, which may not exceed the highest rate of interest on personal fixed-term savings deposits.

§ 4. The interest on money contributions shall be payable once year at the date indicated by the Rules. The sides may agree that the interest due for a given year shall be added to the money contribution of the member.

Art. 153. § 1. The money contribution shall be returned in case of the termination of membership. The return shall be made in cash at the amount sufficient to purchase the number of quintals of rye reckoned in the manner defined in art. 152 § 2.

§ 2. At the request of a member who has brought in means of production on account of his contribution, the cooperative shall return, at the date agreed upon by the sides, the contribution in means contributed by the member.

§ 3. The provisions of the preceding sections shall be applicable to the legal successors of the member.

Art. 154. § 1. If the Rules admit the possibility of bringing in a money contribution in excess of the obligatory sum, such a contribution may be returned during membership.

§ 2. The provisions of art. 152 and 153 shall accordingly apply to the non-obligatory contribution.

#### Sub-division 3

##### Work

Art. 155. § 1. An able-bodied member of the cooperative shall have the right and duty to work in the cooperative for the amount of time determined each year by the general meeting, according to the needs resulting from the plan of the economic activity of the cooperative.

§ 2. In assigning work to the members, the cooperative shall take into account their professional and personal qualifications.

Art. 156. § 1. Apart from members, the cooperative may also employ members of their households.

§ 2. A member of the households of a member shall be taken to be each member of his family as well as other persons residing with him and sharing the household duties.

Art. 157. To perform work requiring special qualifications as well as seasonal or temporary work, the cooperative may employ, next to members and members of their households, also other persons.

Art. 158. § 1. Members shall be remunerated for their work through sharing in the income of the cooperative, according to their contribution of work.

§ 2. The Rules of the cooperative shall establish the unit constituting the measure for evaluation of the contribution of work by members.

§ 3. The detailed principles of the appraisal of the contribution of work to determine the share of a member in the income of the cooperative shall be laid down by the general meeting, taking into consideration the working conditions, the necessary qualifications, and the responsibility connected with the function entrusted to a member.

Art. 159. Members of the household shall be entitled to remuneration for work according to the principles pertaining to the member unless another mode of remuneration has been provided for in the contract.

Art. 160. Members and members of their households shall be entitled to an annual leave of a length and according to the principles defined in the Rules. The Rules shall also determine the manner of calculating the remuneration for the time of leave.

Art. 161. § 1. Women members of the cooperative and women working in the cooperative who are members of the households of members of the cooperative shall be entitled to maternity leave and other benefits connected with the period of pregnancy, of the birth and rearing of a baby on principles laid down in the provisions of the labour law.

§ 2. The rights referred to in the preceding section shall be enjoyed by persons who have worked in the cooperative for the period required to obtain the benefits defined in the regulations on the social security of members of farming cooperatives and of cooperatives of agricultural circles and their families.

Art. 162. § 1. Members of the cooperative drawing old age or disability pensions shall retain the rights of members provided for in the Rules.

§ 2. The members referred to in the preceding section and absent from the general meeting shall not be included in the number of members required by the Rules for the validity of resolutions.

Sub-division 4

Vindication and Protection of Claims on Account of Work

Art. 163. The member may vindicate claims on account of remuneration for work in a court of law without previously exhausting the possibilities of intra-cooperative procedures.

Art. 164. The claims of a member or a member of the household on account of remuneration for work shall be subject to three years' prescription, beginning from the day on which the claim became due.

Art. 165. The remuneration for work of a member or a member of the household shall enjoy the same protection as the law extends to the remuneration of an employee.

Sub-division 5

The Funds of the Cooperative, the Income and its Division

Art. 166. The total income of the cooperative shall constitute the difference between the income derived in the given account year from production and services and extra incomes, on one hand, and the sum of the costs of this activity minus extraordinary losses and due taxes and plus or minus the difference in the value of the stock between the state as of the end of the previous account year and as of the beginning of the current year. The share of the cooperative in the financial result of other organizations shall be taken into account in determining the total income.

Art. 167. The cooperative shall create the following funds:

- 1) the share fund, made up of the shares of members;
- 2) the resource fund, made up of admission fees, a part of the total income, assets received free of charge, and prescribed or precluded liabilities;

the resource fund shall be enlarged by the value of fixed assets and other assets financed out of the means of the cooperative allocated for investments and diminished by the fixed and other assets, liquidated or sold and also by precluded sums and losses due to circumstances beyond the control of the cooperative.

Art. 168. § 1. The cooperative shall allocate at least 10% of the total income for the resource fund, the socio-cultural fund, the housing fund, and the development fund. The allocation for the resource fund shall amount to at least 5% of the total income.

§ 2. The development fund referred to in the preceding section and created at the central union shall be spent for extending aid to cooperatives associated in the union and for projects facilitating their activity.

§ 3. The amount of the allocation for the fund of development and the principles of expenditure of this fund shall be determined by the congress of delegates of the proper central union.

Art. 169. § 1. The Rules of the cooperative may provide for increasing the money contributions out of the total income. In such a case, the Rules shall fix the amount of the allocations and the manner of division among members of the means appropriated for these contributions.

§ 2. The Rules of the cooperative shall specify the rights of the member to withdraw during membership a part of the money contribution referred to in the preceding section.

Art. 170. The Rules of the cooperative may provide for creating, out of the total income, funds other than those listed in art. 168.

Art. 171. § 1. The part of the total income left after making allocations for the funds referred to in art. 168 and 170 shall constitute the divisible income subject to division among members and members of the household on account of their contribution of work and on other grounds provided for in the Rules.

§ 2. The Rules may provide for the right of the general meeting to make appropriations out of the divisible income for the reserve for the stabilization of the shares of members and members of the household in the income in the years to follow. In such a case, the Rules shall lay down the principles of expenditure of this reserve.

§ 3. The division of the divisible income shall be effected within a month of the approval by the general meeting of the balance sheet for the given account year. On account of the division, the cooperative may advance sums of money to members and members of their households on principles laid down in the Rules.

Art. 172. In matters not regulated in art. 166 to 171, the provisions of chapter VII, part I, title I of this Act shall apply accordingly, except for the provisions of art. 75 to 78, 81, 82, 84, and 85.

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**DIVISION 2**  
**SPECIALIZED AGRICULTURAL COOPERATIVES**

Art. 173. The subject matter of economic activity of a specialized agricultural cooperative shall be to run the collective farm specializing in the given line of production, in conjunction with the individual farms of members, and to cooperate in the development of specialized agricultural production on these farms.

Art. 174. Membership in these cooperatives shall be open to persons meeting the requirements provided for in art. 139.

Art. 175. § 1. The member shall make the money contribution at the amount fixed in the Rules.

§ 2. The Rules may provide for the obligation of the member to bring in as a contribution a part of the land owned by him and useful for the collective farm.

Art. 176. § 1. The Rules shall lay down the principles of cooperation between the collective farm and the individual farms of members. In particular, they shall impose upon members the duty to render definite services to the collective farm in the field of production or services and, upon the cooperative, the duty to cooperate in organizing definite lines of production in the farms of members and to extend aid to members in the specialization of their farms, and also the duty to purchase the produce of these farms to the extent connected with the activity of the cooperative.

§ 2. The Rules shall also define the general principles of contracts on the supply by members of goods produced on their farms or on rendering services to the cooperative.

Art. 177. In matters not regulated in the preceding articles, the provisions of art. 142 to 172 and the appropriate provisions of the Civil Code concerning farming cooperatives shall accordingly apply to specialized agricultural cooperatives.

**DIVISION 3**  
**OTHER COOPERATIVES CONCERNED WITH AGRICULTURAL PRODUCTION**

Art. 178. § 1. Aside from cooperatives mentioned in division 1 and 2 of this chapter, other cooperatives may be created, the basic subject matter of whose activity shall be to run the collective farm.

§ 2. If in such cooperatives the members, natural persons, have the statutory obligation, resulting from membership, to bring in land and money contributions in full or in part and to work in the cooperatives, in the absence of other statutory provisions, the provisions of art. 142—172 and the appropriate provisions of the Civil Code concerning farming cooperatives shall accordingly apply to these cooperatives. The Rules may, in particular,

provide for the appropriate application exclusively of the provisions of art. 142 to 154 and of the appropriate provisions of the Civil Code concerning farming cooperatives, and as far as other matters go — of the provisions of part I title I chapter VII and of the provisions of the labour law. This pertains, in particular, to cooperatives associating natural persons, founded on the initiative of cooperatives of agricultural circles.

**DIVISION 4**  
**SETTLEMENT OF DISPUTES**

Art. 179. Disputes, a party to which are agricultural productive cooperatives whose main subject matter of activity is to run the collective farm, shall be settled by the court.

**Chapter II**  
**Cooperatives of Agricultural Circles (of Agricultural Services)**

Art. 180. § 1. The subject matter of the economic activity of cooperatives of agricultural circles (of agricultural services) shall be to render services for agriculture and other kinds of services resulting from the needs of the rural population.

§ 2. The cooperative may also engage in the production of means and materials for agriculture, in food processing, and in agricultural production (the running of a farm).

§ 3. In case the cooperative associates, next to natural persons, also legal persons and engages in agricultural production (the running of a farm), and its members, natural persons, have the statutory obligation resulting from membership to bring in land and money contributions in full or in part, in the absence of different statutory provisions, the provisions of art. 142—154 and the appropriate provisions of the Civil Code concerning farming cooperatives shall accordingly apply to these cooperatives.

**Chapter III**  
**Industrial Productive Cooperatives**

Art. 181. § 1. The subject matter of the economic activity of industrial productive cooperatives shall be to run a joint enterprise on the basis of the personal work of members.

§ 2. The subject matter of the activity of cooperatives of the disabled and cooperatives of the blind shall be the occupational and social rehabilitation of disabled and blind persons through work in the jointly run enterprise.

§ 3. The cooperatives referred to in the preceding section, with a view to carrying out their statutory tasks, shall enjoy the all-round assistance of supreme and local organs of power and state administration and have the benefit of exemptions and reductions in charges under public law.

§ 4. Cooperatives of folk and artistic handicrafts shall create new and cultivate the traditional values of material culture, organize and develop folk and artistic crafts, art, and the artistic industry.

Art. 182. § 1. The cooperative and the member of the cooperative shall be obliged to remain in a relation of employment with respect to each other. Except for the cases specified in the provisions of the law, the refusal to establish a relation of employment or to remain in such a relation shall constitute an infringement of the essential rights and obligations resulting from the relation of membership.

§ 2. The member shall have the right to be employed according to his professional and personal qualifications and to the actual economic possibilities of the cooperatives.

§ 3. The relation of employment between the cooperative and its member shall be established through a cooperative employment contract.

§ 4. In case a relation of employment has not been established through the fault of the cooperative, the member may demand, throughout the duration of membership, the conclusion of a cooperative employment contract. Besides, within a year of the day of commencement of membership, he may demand compensation according to the provisions of the civil law.

Art. 183. § 1. For his work in the cooperative, the member of the cooperative shall receive remuneration consisting of the current remuneration and a share, proportionate to the contribution of work, in the part of the balance surplus to be divided among members.

§ 2. The current remuneration of the member and his share in the balance surplus shall enjoy the protection which the law extends to the remuneration of employees.

Art. 184. § 1. A change of the conditions of work or pay for a member of the cooperative shall be permissible:

1) when this is justified by the economic or organizational needs of the cooperative, in particular, by the introduction of new principles of remuneration, liquidation of a department in which the member is employed, liquidation of the post which the member occupies, or the necessity to employ in the given post a person with higher or special qualifications;

2) in case of the loss by the member of the ability to perform the to-date work, stated by a doctor's certificate, or the loss, through no fault of his, of the qualifications necessary to perform it.

§ 2. The new conditions of work or pay proposed to the member shall correspond to his qualifications and to the economic possibilities of the cooperative.

Art. 185. In case of economic necessity, the general meeting, with a view to ensuring employment to all members, may proportionally reduce the working hours and appropriately cut down the remuneration of members without renouncing the cooperative employment contract or its terms. The

resolution of the general meeting shall apply to at least one department of work or to all members performing work of the same kind.

Art. 186. § 1. The cooperative employment contract shall expire with the termination of membership and in cases in which the provisions of the labour law provide for the expiry of the employment contract by virtue of the law.

§ 2. The dissolution of the cooperative employment contract during membership shall not be permissible except for cases provided for in art. 187 and 189 and in case of the dissolution of this contract in effect of unjustified refusal to accept the conditions of work or pay, and also in case of the dissolution of the contract by way of agreement of the sides if at the same time the member terminates his membership.

Art. 187. The cooperative may dissolve the cooperative employment contract with a member during membership, with the term of notice provided for in the Labour Code being observed, in case of:

1) a reduction of employment on the basis of a resolution of the council of the cooperative, dictated by economic necessity;

2) granting the member the right to an old-age pension.

Art. 188. § 1. In case of an infringement by the cooperative of the provisions of art. 184, art. 187, and art. 191, the member of the cooperative shall have a claim for a verdict stating the ineffectiveness of the termination of the cooperative employment contract or its terms, and if the cooperative employment contract has already been dissolved — a claim for being restored to work on the previous terms.

§ 2. A member of the cooperative who has been restored to work shall be entitled to remuneration for the time of being without work not exceeding six months. The remuneration shall be calculated on the basis of the average remuneration during the last three months and the appropriate share in the part of the balance surplus, and lessened by the remuneration which the member of the cooperative obtained working in the meantime in another enterprise.

§ 3. The provision of the preceding section shall accordingly apply to a member of the cooperative who, following a change of the conditions of work or pay in violation of art. 184, took up work on the new terms.

Art. 189. § 1. The cooperative may, during membership, terminate the cooperative employment contract without notice only for reasons which, according to the provisions of the Labour Code, justify such termination without guilt on the part of the employee.

§ 2. A member with whom the cooperative employment contract has been terminated without notice in spite of the lack of the reasons referred to in the preceding section or in violation of the provision of art. 91 shall have a claim for being restored to work on the previous terms.

§ 3. A member who took up work in effect of being restored to work shall be entitled to remuneration for the time of being without work

according to the principles defined in art. 188 § 2, but not less than the amount of a month's pay.

Art. 180. § 1. The termination or dissolution of the cooperative employment contract or a change of the conditions of work or pay shall require cooperation with the authorities of a trade union, as provided for in the Labour Code, if such a trade union operates in the cooperative.

§ 2. The provisions of art. 184 and art. 187—189 shall not preclude the application of provisions of the labour law more advantageous to members of the cooperative, prohibiting or restricting the termination of the employment contract, a change of the terms stipulated in the contract, or the dissolution of the contract without notice.

Art. 191. A statement of the cooperative on the termination of the cooperative employment contract, on the dissolution of the contract without notice, or on a change of the conditions of work or pay shall be made in written form and specify the reasons justifying the termination or dissolution.

Art. 192. § 1. After the cessation of the reasons which justified the termination or dissolution by the cooperative of the cooperative employment contract without notice during membership, the cooperative and the member of the cooperative shall be obliged to conclude a cooperative employment contract.

§ 2. In case of a violation by the cooperative of the obligation referred to in the preceding section, the member of the cooperative shall have a claim for the conclusion of a cooperative employment contract with a content corresponding to the actual economic possibilities of the cooperative. A member who has taken up work shall be entitled to remuneration for the time of being without work on principles defined in art. 188 § 2, except that the remuneration for the newly undertaken work shall serve as the basis for computing the average remuneration.

Art. 193. § 1. A member may be excluded from the cooperative:

1) for reasons justifying, according to the provisions of the labour law, the termination of the employment contract without notice through the fault of the employee;

2) in case of serious violation of the duties of a member or deliberate action to the detriment of the cooperative.

§ 2. The provisions of the preceding section shall not exclude the application of art. 24 § 1.

§ 3. Exclusion may not take place a month after the cooperative learnt of the circumstances justifying it.

§ 4. The exclusion of a member who was employed on the basis of a cooperative employment contract shall have such effects as the labour law envisages for cases of the termination by the enterprise of the employment contract without notice through the fault of the employee.

Art. 194. § 1. A member may be struck off the register of members of the cooperative only when:

1) he has not been employed in the cooperative for more than a year for reasons for which the cooperative is not responsible;

2) he has lost the ability to work in part or in full and the cooperative cannot employ him at a post corresponding to his limited capability for work;

3) he has lost the full legal capacity and the Rules do not provide for the membership of members not possessing such a capacity.

§ 2. In the case mentioned in § 1 point 2, the striking off shall become effective after the lapse of the time fixed in the Labour Code for the termination of the employment contract.

Art. 195. If a trade union operates in a cooperative, the cooperative shall pass a resolution on the exclusion of a member from the cooperative or on striking a member off the register of members after consulting the proper organ of the trade union.

Art. 196. § 1. A member employed in the cooperative on the basis of the cooperative employment contract whom the cooperative has excluded or struck off the register of members in violation of the provisions of art. 193—195 shall have the claims listed in the provisions of art. 188 § 1 and 2, or if this is more advantageous to the member, in the provisions of the labour law concerning the rights of the employee in case of the termination by the enterprise of the employment contract without notice in violation of the law.

§ 2. The member may prosecute the claims referred to in the preceding section only when he is seeking the revocation of the resolution on exclusion or striking off.

§ 3. If the exclusion or striking off was justified, but took place in violation of the provisions of art. 193 § 3 or art. 195, the action of a member for the revocation of a resolution on the exclusion or striking off or for restoration to work may be dismissed if the member's further staying in the cooperative would be incompatible with the principles of social intercourse.

§ 4. A member of the cooperative who, in spite of the grounds for exclusion from the cooperative or striking off the register of members, does not seek restoration to work or re-establishment of membership, shall be entitled to compensation equal to the amount of remuneration for the term of notice.

Art. 197. § 1. Disputes arising from the cooperative employment contract shall be considered by courts.

§ 2. The period for the member of the cooperative to take legal action before the court in matters concerning a change of the conditions of work or pay, the termination or dissolution of cooperative employment contract, and the refusal to conclude such a contract shall be fourteen days beginning

from the day of delivery to the member of written notification of the statement of the cooperative in these matters along with justification.

§ 3. The claims resulting from membership referred to in art. 182 § 4 and art. 192 § 2 may be prosecuted before the court after the possibilities of intra-cooperative procedures have been exhausted or after the ineffective expiration of the terms stipulated in the Rules of the cooperative for the adoption of a resolution by the appellate organ. In such cases, the deadline mentioned in the preceding section shall begin from the day of delivery to the member of the cooperative of a notification along with justification of the resolution of the appellate organ adopted within intra-cooperative proceedings or from the expiry of the deadline set in the Rules of the cooperative for passing the resolution.

§ 4. The member may institute intra-cooperative proceedings also in matters concerning the cooperative employment contract other than those mentioned in § 3. In such a case, the provisions of art. 32 and art. 33 § 2 shall apply accordingly.

Art. 198. § 1. Cases concerning the existence of membership, exclusion from the cooperative, or striking off the register of members as well as cases of claims on account of exclusion from the cooperative or striking off the register in violation of the law shall be heard by courts competent to try cases in which non-material rights are involved.

§ 2. The member may seek, by legal process, the revocation of the resolution of the council of the cooperative on exclusion or striking off without previously exhausting the possibilities of intra-cooperative procedures. In such a case, the resolution of the council of the cooperative shall be subject to appeal by the member; the deadline for bringing an action for the revocation of the resolution shall be six weeks from the day of delivery to the member of the notification on exclusion or striking off along with justification.

§ 3. The deadline set in the preceding section shall likewise apply to the prosecution by the member of a claim for damages on account of groundless exclusion or striking off.

Art. 199. In matters not regulated by the provisions of art. 182 to 198, the provisions of the labour law shall accordingly apply to the cooperative employment contract, except for the provisions of the Labour Code concerning the conclusion of employment contracts for a trial period and introductory period.

Art. 200. § 1. The Rules of the cooperative may make the admission of a member dependent on completing a term of candidacy. In such a case, the Rules shall indicate the organ of the cooperative empowered to admit candidates and determine the length of the term of candidacy. For a candidate who has not worked in any enterprise for at least a year, this period shall not be shorter than a year.

§ 2. With respect to candidates for members of the cooperative, the term stipulated in art. 17 § 3 shall begin from the day of completion of the period of candidacy.

§ 3. To candidates for members of the cooperative, the provisions of the Labour Code concerning persons employed on the basis of an employment contract concluded for a definite period of time shall apply; however, the relation of employment between the candidate and the cooperative may be dissolved earlier with the terms and principles laid down in the provisions of the Labour Code for the dissolution of the contract concluded for an indefinite period of time being observed.

§ 4. The Rules may grant the candidates some rights and duties of members of the cooperative.

§ 5. The workers of the cooperative employed for at least twelve months on the basis of the employment contract concluded for an indefinite period of time and seeking to be admitted as members of the cooperative shall be exempted from the obligation to complete the period of candidacy. The cooperative may not refuse the admission of such a worker as a member if he meets the statutory requirements and the cooperative has the possibility to employ him further.

Art. 201. § 1. The Rules may provide for employing all or some members, not on the basis of the cooperative employment contract, but on the basis of a contract on cottage work, a commission contract, or a piecework contract if this is justified by the type of the activity of the cooperative. The cooperative shall be obliged to fairly distribute work among these members, taking their qualifications into account.

§ 2. The provisions of art. 182 § 1, 2, and 4, art. 183, and art. 186 § 1 shall accordingly apply to the members of the cooperative referred to in the preceding section.

Art. 202. § 1. To members employed on the basis of the cottage work contract, aside from the provisions referred to in art. 201 § 2, the provisions of art. 184, 185, 187—198, and 200 shall also apply accordingly.

§ 2. In matters not regulated in art. 201 and in the preceding section, the appropriate provisions of the labour law shall be applicable as regards the termination of the cottage work contract, its dissolution without notice, and its expiration. As regards other matters, the provisions of this law concerning the cottage work contract shall be applicable.

Art. 203. The Rules of the cooperative shall define in detail the rights and duties of members employed on the basis of the commission contract or the piecework contract as well as the reasons justifying the exclusion of these members from the cooperative or striking them off the register of members.

Chapter IV  
Housing Cooperatives

DIVISION I  
GENERAL PROVISIONS

Art. 204. § 1. The subject matter of the activity of the housing cooperative shall be to satisfy the housing needs of its members and their families and the economic and cultural needs resulting from residence in the cooperative housing estate or building.

§ 2. With a view to satisfying the housing needs, the cooperative may:  
1) allot members dwellings in buildings constituting the property of the cooperative;

2) build one-family houses with a view to transferring the ownership of these houses to members and other buildings with a view to transferring the ownership of the dwellings in these buildings to members;

3) extend assistance to members in building their own dwelling houses.

§ 3. The Rules of the cooperative shall determine in which of the forms mentioned in the preceding section the cooperative satisfies the housing needs of members.

§ 4. The cooperative may take over and administer buildings which are not its property if this is justified economically and socially.

Art. 205. The number of members waiting in the cooperative for the allotment of dwellings shall correspond to the number of dwellings planned to be built. With a member seeking the allotment of a dwelling, the cooperative shall conclude, within three months of the day of his admission, an agreement stipulating the order in which he will receive a dwelling. The principles of concluding the agreements and determining the order of allotments shall be laid down by the Rules, which will take into account the guidelines issued by the proper central union.

Art. 206. § 1. The member of the cooperative shall be entitled to one cooperative dwelling only.

§ 2. In case of acquiring the right to more than one cooperative dwelling, the member shall liquidate, within six months from the day on which he was requested to do so by the cooperative, the state of affairs inconsistent with the provision of the preceding section. After the ineffective expiry of this term, the proper cooperative shall adopt a resolution on the expiration of the right acquired later.

§ 3. The provision of the preceding section shall apply accordingly when the spouses acquire the right to more than one cooperative dwelling unless there exist reasons justifying their living separately.

§ 4. A legal person, member of the cooperative, shall not be entitled to a dwelling.

Art. 207. A legality incapacitated person may be a member of the cooperative. A minor may be admitted to the cooperative in case of acquiring the

right to a cooperative dwelling by way of succession or on the basis of a testamentary disposition and in other cases specified in the Rules (art. 15 § 3).

Art. 208. § 1. Members of the cooperative shall be obliged to participate in the costs of exploitation and maintenance of the cooperative property, in socio-educational activity, and in the liabilities of the cooperative on other accounts by bringing in housing or building contributions and by paying other charges in keeping with the provisions of the Rules.

§ 2. If the cooperative satisfies the needs of members in various forms, the Rules shall define the manner of distributing the costs of activity of the cooperative among the individual groups of members.

§ 3. The value of fixed assets and other assets financed directly out of the share fund or the housing and building contributions shall not increase the resource fund; the remission of the value of these fixed assets shall burden, appropriately, the share fund or the housing and building contributions.

§ 4. The difference between the costs of and the revenues from the management of the housing resources of the cooperative shall appropriately increase the costs of or revenue from this management in the next year.

§ 5. The charges paid by the cooperative for the fund of development shall burden the costs of its economic activity. The provisions of art. 78 § 2 shall apply accordingly.

§ 6. The cooperative shall create the bonus fund at the amount fixed by the general meeting. The writings off for this fund shall burden the costs of activity of the cooperative.

Art. 209. § 1. If the dwelling or the building require an overhaul, a rebuilding, or a modernization and this obligation rests with the cooperative, the cooperative may demand that the persons living in this dwelling or building make it available for doing the necessary work.

§ 2. If the kind of the overhaul or modernization of the building requires this, the persons occupying the dwelling (building) shall be obliged to move to a replacement dwelling at the request and cost of the cooperative, and in case it is impossible to provide such a dwelling — to a substitute dwelling for the period of duration of the repair or modernization, strictly fixed and announced to the persons concerned. In case of moving to a substitute dwelling, the period may not be longer than twelve months.

§ 3. While living in the replacement dwelling or substitute dwelling, the member shall pay the charges only for the use of that dwelling.

§ 4. In case of modernization of the building, the member of the cooperative shall be obliged to complement the housing or building contribution.

§ 5. The cooperative may create a fund for overhauls of housing resources. The writings off for this fund shall burden the costs of management of the housing resources.

Art. 210. § 1. After the expiry of the right to the dwelling, the member

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and the persons living in that dwelling who derive their rights from the member shall be obliged to vacate the dwelling. The cooperative shall not be obliged to provide an exchange dwelling.

§ 2. The Rules shall provide for the time, not shorter than three months, for vacating the dwelling after the expiry of the right to that dwelling.

Art. 211. The provisions of art. 20 § 1 shall not apply to housing and building contributions, and as regards housing contributions, the provisions of art. 27 § 3 shall not be applicable either. In case of the termination of membership, the shares shall be returned simultaneously with the return of the housing or building contribution (equivalent of the cooperative right to the dwelling); in such a case, the provision of art. 26 § 1 shall not apply.

Art. 212. In matters not regulated by this Act, the rights and duties of members, notably the principles of bringing in and fixing the amount of the housing and building contribution, of granting the right to a dwelling, of settlements on account of additional equipment of the dwelling by the member of the cooperative, and of the rights of the member to exchange the dwelling shall be determined by the provisions of the Rules. As regards dwellings built with the aid of state (social) funds, the principles of bringing in and fixing the amount of the contributions shall correspond to the terms on which the cooperative has obtained this aid.

### DIVISION 3 THE COOPERATIVE RIGHT TO THE DWELLING

#### Sub-division 1 General Provisions

Art. 213. § 1. In buildings constituting the property of the housing cooperative, the members shall enjoy the right to use the allotted dwelling with an area corresponding to the amount of the housing or building contribution and to other criteria specified in the Rules (the cooperative right to the dwelling).

§ 2. The member of the housing cooperative, depending on the type of the contribution made (housing or building) and the request submitted, may obtain the cooperative right to the dwelling:

- 1) of the tenancy type, or
- 2) of the ownership type.

§ 3. The cooperative right to the dwelling arises with the allotment of the dwelling. The statement of the cooperative in this matter, in order to be valid, shall be made in written form.

§ 4. Before the expiration of the cooperative right to the dwelling, the allotment of this dwelling to another member shall be invalid.

Art. 214. The size of the dwelling allotted shall correspond to the needs of the member, his family, and other persons living together with the member at the moment of the allotment of the dwelling.

Art. 215. § 1. The cooperative right to the dwelling shall be vested only in one person or in a married couple.

§ 2. The cooperative right to the dwelling allotted during matrimony to both spouses or one of them to satisfy the housing needs of the family shall be vested in both spouses jointly, regardless of the property relations existing between them. If there exists a separation of property between the spouses, the provisions concerning joint property shall apply to the community of the cooperative right to the dwelling in matters not regulated by the provisions of this article.

§ 3. The termination of the joint ownership of property during matrimony shall not entail the termination of the community of the cooperative right to the dwelling. However, the court, applying appropriately the provisions on the abolition of joint ownership, may, at the request of either spouse, abolish the community of this right for important reasons.

§ 4. If the property relations between the spouses are subject to joint ownership, the housing or building contribution shall belong, before the allotment of the dwelling, to both spouses jointly, irrespective of the origin of the means out of which it has been made. This provision shall not affect the right of either spouse to demand the return of expenses and outlays made out of his or her separate property for the benefit of the joint property.

§ 5. Both spouses may be members of the cooperative even if the cooperative right to the dwelling devolves to one of them only.

Art. 216. § 1. After the termination of marriage in effect of a divorce or annulment of the marriage, the spouses shall inform the cooperative within a year's time to which of them the cooperative right to the dwelling devolves, or to present evidence that legal proceedings have been instituted for the division of this right. The spouse who is not a member of the cooperative shall file the membership declaration within three months from the day on which the right to the dwelling devolved to him or her.

§ 2. Unless the spouses perform the acts referred to in the preceding section, the cooperative shall fix an additional term, not shorter than three months, warning them of the consequences which the failure to comply with this term may entail. After the ineffective expiration of this term, the cooperative shall pass a resolution on the expiry of the cooperative right to the dwelling.

Art. 217. § 1. Letting out the allotted dwelling or affording the use of it free of charge, either in part or in full, shall be permissible only after the member has occupied the dwelling.

§ 2. Letting out or affording the use of the whole dwelling shall require the consent of the cooperative.

§ 3. The contracts concluded by the member concerning the use of the dwelling or a part thereof shall expire at the latest with the expiration of the cooperative right to the dwelling.

**Sub-division 2**  
**The Right to the Dwelling of the Tenancy Type**

Art. 218. § 1. The right to the dwelling of the tenancy type shall be untransferable, shall not be bequeathed, and shall not be subject to execution.

§ 2. The right to the dwelling of the tenancy type shall expire with the termination of membership. In case this right is vested in a married couple, it shall expire with the termination of the membership of both spouses.

§ 3. The member shall fulfill the obligations stipulated in art. 208 § 1 by bringing in the housing contribution at the amount corresponding to the part of the costs of construction falling to his dwelling and by paying the charges connected with the use of the dwelling.

§ 4. In case of the expiry of the right to the dwelling of the tenancy type, the cooperative shall return the housing contribution to the person entitled to it. The sum paid on this account shall correspond to the housing contribution which must be brought in by the member of the cooperative seeking the allotment of a newly built dwelling of the same size and with a similar standard of equipment. The principles of computing this sum shall be laid down by the Rules. The claim for the return of the contribution shall be transferable and subject to execution.

Art. 219. § 1. At the written request of the member and after he has brought in the building contribution on the principles laid down in art. 226, the cooperative shall transform, within the period specified by the Rules, the right vested in him into the right to the dwelling of the ownership type. The statement of the cooperative, in order to be valid, shall be made in written form.

§ 2. In the cases specified in the Rules, the cooperative may refuse to transform the right to the dwelling of the tenancy type into that of the ownership type.

§ 3. The Rules may stipulate that in buildings for the disabled, for lone persons, and in other special-purpose buildings the right to the dwelling of the tenancy type may not be transformed into that of the ownership type.

Art. 220. Upon the death of one of the spouses, the right to the dwelling of the tenancy type vested in both spouses shall devolve to the other spouse. This spouse, unless he or she is a member of the cooperative, shall file the membership declaration within a year from the death of the member on pain of the expiry of the right. This provision shall not effect the rights of the successors to inherit the contribution.

Art. 221. § 1. In case of the expiry of the right to the dwelling of the tenancy type in effect of the termination of membership or the failure to perform the act referred to in art. 220, the claim for admission to the cooperative and for the allotment of the dwelling formerly occupied by the

member shall devolve to the spouse, children, and other close persons living together with the member.

§ 2. In case of the termination of membership during the period of waiting for the allotment of the dwelling, the persons referred to in the preceding section shall have a claim for the admission to the cooperative and the allotment of the dwelling in the order to which the former member was entitled. The spouse shall have this claim irrespective of the place of residence.

§ 3. With a view to keeping the claims referred to in the preceding section, it shall be necessary to submit, within the period prescribed in the Rules, the membership declaration and a written application for the allotment of the dwelling. In case several entitled persons apply, the decision shall be made by the court in non-litigious proceedings. After the ineffective expiry of the term set by the cooperative for bringing an action to the court, the choice shall be made by the cooperative.

Art. 222. Upon the completion of the liquidation of the cooperative, the right to the dwelling of the tenancy type shall be transformed into the relation of tenancy unless the building is purchased by another cooperative.

**Sub-division 3**  
**The Right to the Dwelling of the Ownership Type**

Art. 223. § 1. The right to the dwelling of the ownership type shall be a transferable right, shall devolve to the successors, and shall be subject to execution. It shall be a limited material right.

§ 2. The transfer of the right to the dwelling of the ownership type shall be permissible after the member has occupied the allotted dwelling. The effectiveness of the transfer shall depend on the admission of the buyer to the cooperative.

§ 3. The transfer of the right to the dwelling of the ownership type shall also embrace the building contribution. Until this right expires, the transfer of the contribution alone shall be invalid.

§ 4. The transfer of the right to a part of the dwelling shall be invalid.

Art. 224. The cooperative may not refuse to admit as a member the buyer of the right if he meets the requirements set in the Rules. The same shall apply to the successor who has performed the acts provided for in art. 228 and to the bidder.

Art. 225. The Rules may provide that the transfer of the right to the dwelling of the ownership type by a member who is seeking the allotment of the dwelling shall deprive him of the right to obtain this allotment. The cooperative may, within a year from the day of the allotment made in contravention of the provisions of the Rules, avoid the legal effects of the act of allotment.

Art. 226. § 1. The member shall fulfil the obligations provided for in art. 208 § 1 by bringing in the building contribution on the principles laid down in the Rules, at the amount corresponding to the total cost of construction falling to his dwelling, and by paying the charges connected with the use of the dwelling.

§ 2. A member who is allotted a dwelling to which the right of another person has expired shall bring in the building contribution at the amount corresponding to the equivalent of the right to the dwelling of the ownership type in the manner stipulated in art. 229 § 1.

§ 3. If, in effect of the final calculation of the costs of construction, a difference has arisen between the amount of the initially fixed building contribution and the costs of construction of the dwelling, the member in whom the right to the dwelling of the ownership type is vested at the moment of making this calculation shall be entitled or indebted.

Art. 227. § 1. The right to the dwelling of the ownership type shall expire with the lapse of six months from the day of termination of membership for reasons other than the death of the member unless the member indicates, before the expiry of this term, the person to whom he has sold the right and this person files the membership declaration. In such a case, the right shall expire when the refusal to admit that person as a member of the cooperative becomes final and six months have elapsed since the day of termination of membership. The buyer may, within three months of the day of delivery to him of the notification of the final refusal of the cooperative, bring an action to the court for ordering his admission to the cooperative.

§ 2. In case of the exclusion or striking off of the member, the term of six months referred to in the preceding section shall commence from the day on which the decision about the deprivation of membership has become final.

Art. 228. § 1. In case of the death of the member, the successor shall, within a year of the opening of the inheritance proceedings, present the statement on acquisition of the inheritance, and if the inheritance proceedings have not been completed by this time, submit a proof of instituting such proceedings. If there are several successors, they moreover shall, within three months from the day on which the decision on the acquisition of the inheritance has become final, indicate the successor to whom the right to the dwelling of the ownership type has devolved in effect of the division of the inheritance, or present evidence that proceedings for the division of the inheritance have been instituted. In the latter case, the successor shall be indicated within three months from the day of conclusion of the proceedings for the division.

§ 2. A successor who is not a member of the cooperative shall file the membership declaration along with the statement of acquisition of the inheritance, and when there are several successors — together with the

proof that the right to the dwelling of the ownership type has devolved to him in effect of the division of the inheritance.

§ 3. In case of the failure to perform the acts referred to in the preceding sections or the refusal to admit the successor to the cooperative, the right to the dwelling shall expire.

§ 4. In case of the death of one of the spouses in whom the right to the dwelling was vested jointly, and in case of the bequeathal of the right to the dwelling, the provisions of the preceding sections shall apply accordingly.

Art. 229. § 1. In case of the expiration of the right to the dwelling of the ownership type after the member has occupied it, the cooperative shall be obliged to pay the entitled person an equivalent of this right after deducting the dues on account of the part of the contribution not paid. The equivalent shall be determined on the basis of the building contribution, with account being taken of:

- 1) the increase or decrease of the costs of construction;
- 2) the part of depreciation of the building falling to the given dwelling;
- 3) the devastation of the dwelling in excess of the normal tear and wear;
- 4) other circumstances having an effect on the decrease or increase of the use value of the dwelling.

§ 2. In case of the death of the member prior to the allotment of the dwelling, the building contribution along with the rights attached to it shall devolve to the successors. Unless they perform the acts stipulated in the provisions of art. 228 § 1 and 2, which shall apply accordingly, they shall be entitled to the return of the sums paid on account of the building contribution.

§ 3. In case of the termination of membership for reasons other than death prior to the allotment of the dwelling or before the member has occupied the allotted dwelling:

- 1) the former member shall be entitled to the return of the sums paid on account of the building contribution;
- 2) the spouse, children, and other persons close to the former member shall be entitled to the rights referred to in the provision of art. 221 § 1, which shall apply accordingly.

Art. 230. To the execution from the right to the dwelling of the ownership type, the regulations concerning the execution from immovables shall apply accordingly, except that the right may not be adjudged to the bidder unless he has been admitted to the cooperative. In such a case, the bidder shall have the right to withdraw from the auction and retract the guaranty offered.

Art. 231. Upon the completion of the liquidation of the cooperative, the right to the dwelling of the ownership type shall transform into the right to separate ownership of the dwelling or ownership of the one-family house unless the building has been purchased by another cooperative.

DIVISION 3

THE RIGHT TO ONE-FAMILY HOUSES AND DWELLINGS BUILT  
FOR THE PURPOSE OF TRANSFERRING THE OWNERSHIP  
OF THESE HOUSES AND BUILDINGS TO MEMBERS

Art. 232. § 1. The housing cooperative which takes up the construction of one-family houses for the purpose of transferring the ownership of these houses to members may allot the future houses as soon as it is possible to designate them considering the state of preparation of the project for execution.

§ 2. After the one-family house has been built, the cooperative shall be obliged to allot it to the member or express the consent to his occupying the house if it has been allotted earlier.

§ 3. After the member has occupied the allotted house, the right to this house shall become a hereditary and transferable right and shall be subject to execution. The effectiveness of the transfer of the right shall depend on the admission of the buyer to the cooperative.

§ 4. To the right to the one-family house, the provisions of division 2 sub-division 1 and 3 of this chapter shall apply, with the provisions given below being observed.

Art. 233. § 1. If the right to the one-family house has devolved to several successors, they shall appoint from among themselves, within a year from the day of instituting inheritance proceedings, a plenipotentiary to perform legal acts connected with the exercise of this right, including the conclusion on their behalf of a contract or the transfer of the ownership of the house. In case of the ineffectual expiry of this term, at the request of the successors or the cooperative, the court shall appoint, in non-litigious proceedings, the representative. The plenipotentiary (representative) shall have the right to take part in the general meeting.

§ 2. In case of the death of one of the spouses, in whom the right to the one-family house was vested jointly, the provisions of the preceding section shall apply accordingly.

Art. 234. § 1. The Rules may provide for the adoption by the cooperative of a resolution on the expiry of the right to the one-family house if the member or his successor, for reasons dependent on him, has failed to perform legal or factual acts without which the further realization of the investment programme or the transfer to the members of the ownership of houses built within a jointly realized investment project would be complicated. The Rules shall define in detail the cases in which the adoption of such a resolution shall be permissible. In case of the expiry of the right for reasons for which the member is not responsible, the cooperative shall propose to him the allotment of a dwelling (the right to the dwelling of the ownership type) if in this given locality it is buildings blocks of flats, with account being taken of the principles laid down in art. 205.

§ 2. The Rules may provide for shortening the term referred to in art. 227 § 1, but to not less than three months.

§ 3. In case of the impossibility to find a candidate to replace the member whose right to the one-family house has expired through his own fault prior to occupying the house, the dues on account of the return of the sums paid for the building contribution may be diminished by the costs incurred for the preparation of the construction of the house destined for him.

Art. 235. § 1. After calculating the costs of construction and ultimately determining the amount of the building contributions, after the members have brought in these contributions, or a part thereof, and taken over the liabilities of the cooperative covering the rest of the dues on account of the contributions, the cooperative shall transfer to the members the ownership of the allotted houses together with the rights to the building lots.

§ 2. The ownership of the house may also be transferred to the successors of the member or to the spouse if the rights to the house devolves to both spouses.

§ 3. Apart from the building contribution, the members shall be obliged to cover the costs of transfer of the ownership of the house and also share in the costs of liquidation of the cooperative if the transfer of ownership takes place within the framework of liquidation proceedings.

§ 4. After the transfer of the ownership of the houses, the common water supply, sewerage, heating, and other facilities shall likewise become the joint property of the owners of the houses. To this joint property, the provisions of art. 136 § 2 of the Civil Code shall apply accordingly.

Art. 236. The Rules may provide for the administration of the houses by the cooperative after the transfer of their ownership to the members.

Art. 237. The provisions of this division shall also be applicable in case the cooperative is building small blocks of flats for the purpose of establishment for members of the separate ownership of the dwellings in these blocks.

DIVISION 4  
BUSINESS PREMISES AND GARAGES

Art. 238. § 1. The cooperative may allot business premises to members (natural or legal persons) or lease them to other persons if the members or these persons possess the qualifications to conduct activity in accordance with the purpose of the premises. Upon the allotment, the cooperative right to the business premises shall arise, to which the provisions concerning the right to the dwelling of the ownership type shall apply accordingly, with the provisions given below being observed. The provisions of art. 205 shall not apply to members admitted to the cooperative in connection with seeking the allotment of business premises.

§ 2. Only a person meeting the requirements defined in the preceding section may be the buyer of the cooperative right to business premises.

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§ 3. The member enjoying the cooperative right to business premises may let out or afford the use free of charge of the whole or a part of the premises only with the consent of the cooperative.

§ 4. The cooperative may pass a resolution on the expiry of the right to business premises if the member:

1) does not possess the qualifications to conduct the activity for which the premises are designed or does not prove such qualifications within six months of the day on which he was called to do so by the cooperative;

2) does not conduct on the premises activity consistent with their purpose and does not take up such activity within six months from the day on which he was called to do so unless he ceased the activity for reasons beyond his control;

3) lets out or affords the use of the allotted premises without the consent of the cooperative.

Art. 239. § 1. The principles of use by members of the cooperative of garages, of financing their construction, and of settlements on this account shall be laid down by the provisions of the Rules.

§ 2. The provisions of art. 229 § 1 shall accordingly apply to the return to the member after vacating the garage of the payments which he made to cover the cost of its construction.

## PART II

### Cooperative Unions and Supreme Cooperative Council

#### TITLE I

#### COOPERATIVE UNIONS

Art. 240. § 1. The cooperative union shall be a self-governing cooperative organization. It shall be set up on the initiative of cooperative organizations (cooperatives and their unions), expressed in resolutions of the general meetings (congresses of delegates) of these organizations.

§ 2. The aim of the cooperative union shall be to extend to the affiliated cooperative organizations assistance in their statutory activity. The union shall support, in particular, the activity of youth cooperatives and cooperate in this field with youth organizations.

§ 3. The cooperative union which is not a central union shall associate in an appropriate central cooperative union. The provisions of art. 4 § 1 and 3 shall apply accordingly. Moreover, the union may associate in other cooperative unions.

Art. 241. § 1. With a view to the realization of the aim defined in art. 240 § 2, the appropriate central union shall:

1) carry out audits of the activity of the associated cooperative organizations and issue instructions for them;

2) initiate and promote cooperation between the cooperative organizations

which are its members as well as between these organizations and cooperative organizations associated in other unions;

3) represent the interests of the cooperative organizations associated in the union before the organs of state power and administration, present to these organs the postulates and requests of the associated organizations and inform these organizations of the decisions made in these matters;

4) elaborate and pass opinions on drafts of legal acts pertaining to the associated cooperative organizations;

5) initiate, improve, and disseminate the cooperative forms and methods of management and of socio-educational activity;

6) support organizationally and financially newly established cooperatives;

7) initiate and extend assistance to the associated cooperative organizations in the field of cooperation with foreign organizations.

§ 2. Moreover, the central union shall perform other tasks resulting from the provisions of the law.

Art. 242. In especially justified cases, the Supreme Cooperative Council may grant social and economic organizations, at their own request, the rights of the central unions, resulting from this Act, with respect to the cooperatives which are their members. With respect to such organizations, the Supreme Cooperative Council shall have the same rights and duties in the field of cooperative matters as it has with respect to the central unions.

Art. 243. The union may run training centres, vocational schools, and social and cultural-educational facilities with a view to satisfying the needs of the members and employees of the associated cooperative organizations and also the needs of its own employees.

Art. 244. The Rules of the union may provide for conducting economic activity with a view to helping the associated cooperative organizations to carry out their tasks. In this field of activity, the appropriate provisions concerning cooperatives shall apply to the union.

Art. 245. § 1. The Rules of the unions shall determine which cooperative organizations may associate in the union, the territory of activity, the name, and the seat of the union, its tasks and the details referred to in art. 5 § 1 point 6 and 7, the principles of fixing the membership fees, and the Rules of a union which conducts economic activity — also the subject matter of this activity and the details mentioned in art. 5 § 1 point 5. The Rules shall also lay down the principles of convening the congress of delegates, the election of the delegates to the congress, and the election and recalling of members of other organs of the union.

§ 2. Moreover, the Rules may contain other provisions.

Art. 246. The Union shall become a legal person upon its being entered into the register. The provisions of art. 6 § 3—5 and art. 7—9 shall apply accordingly.

Art. 247. § 1. The organs of the union shall be:

- 1) congress of delegates,
- 2) council,
- 3) board.

§ 2. The Rules may provide for calling into being organs other than those listed in the preceding section.

Art. 248. The congress of delegates shall be composed of representatives of the cooperative organizations associated in the union. The principles of fixing the number of delegates representing the individual organizations, members of the union, shall be laid down by its Rules.

Art. 249. The congress of delegates shall be the supreme organ of the union.

Art. 250. § 1. The exclusive powers of the congress of delegates shall include:

- 1) examining the reports on the activity of the union and passing resolutions as regards the motions of the council, the board, and members of the union in these matters;
- 2) passing resolutions on the merger and division of the union and on its liquidation;
- 3) adopting amendments to the Rules;
- 4) fixing the amount of the fees paid by the member organizations for the performance of the tasks of the unions.

§ 2. The exclusive powers of the congress of delegates of the central union shall moreover include fixing the amount of the payments by cooperatives for the funds of development and adopting the regulations of this fund, which shall define its aims and the principles of spending it.

§ 3. The Rules may reserve for the exclusive competence of the congress of delegates the adoption of resolutions in other matters.

§ 4. The Rules may entrust to the council the exercise of the powers mentioned in § 1 point 4 in periods between the congresses.

Art. 251. The congress shall be convened by the board of the union at least once every four years, at the date set by the Rules. Moreover, the congress may be convened by the board at any time for important reasons. The congress shall be convened by the board at the request of the council or of one-tenth of the members of the union, or at the request of the Supreme Cooperative Council or the appropriate central union.

Art. 252. § 1. The scope of activity of the council of the union shall include:

- 1) adopting the plans of activity and approving the annual report and balance sheet;
- 2) passing resolutions on the purchase or sale of immovables and a plant and on the encumbrance of immovables;

3) dividing the balance surplus and determining the manner of covering the losses;

4) excluding (striking off) members from the union.

§ 2. The provisions of art. 46 § 1 and 2 shall accordingly apply to the scope of activity of the council of the union.

§ 3. The members of the council shall be elected and recalled by the congress of delegates unless the Rules provide for another manner of choosing the members of the council. The Rules of the union may provide for the election by the council of its praesidium. The provision of art. 46 § 3 shall accordingly apply to the scope of activity of the praesidium.

Art. 253. The board shall be elected and recalled by the council of the union unless the Rules reserve this right for the congress of delegates.

Art. 254. Members of the associated cooperative organizations as well as other cooperative activists may be elected to the council and the board of the union.

Art. 255. § 1. The resolutions of the congress of delegates and of the council of the union on the organizational and financial affairs of the union and in the questions of exclusion or striking off of a member of the union shall be binding on all cooperative organizations associated in this union.

§ 2. The resolutions referred to in the preceding section shall be announced to the cooperative organizations in the manner and at the date indicated in the Rules.

Art. 256. § 1. The cooperative organization to which the resolution of the congress of delegates or the council of the union pertains in matters referred to in the preceding section may appeal this resolution to the court within six weeks of the day on which it was notified of the resolution.

§ 2. The basis for the appeal may be an infringement by the resolution of the provisions of the law or the Rules.

§ 3. The appealing of the resolution shall not interrupt its execution. However, the court may secure the petition by suspending the execution of the resolution.

§ 4. The decision of the court shall have legal validity with respect to all members of the union.

Art. 257. § 1. In matters not regulated in this title, the provisions of part I title I, except art. 24 § 4, art. 32—34, and with respect to the central unions also art. 91—95 and art. 103—107, shall apply accordingly. Moreover, the provisions of this Act concerning shares and contributions shall not be applicable to the central unions which do not conduct economic activity.

§ 2. The rights of the central unions provided for in art. 6 § 3 and 4, art. 66 § 2, and art. 110 § 1 shall be enjoyed by the Supreme Cooperative Council with respect to these unions.

**TITLE II**  
**SUPREME COOPERATIVE COUNCIL**

Art. 258. § 1. The Supreme Cooperative Council shall be the supreme organization of the cooperative movement. Its task shall be to ensure the all-round and proper development of the cooperative movement in Poland and to represent this movement in Poland and abroad.

§ 2. The Supreme Cooperative Council shall be a legal person.

Art. 259. The Supreme Cooperative Council shall, in particular:

- 1) conduct activity aimed at ensuring the observance by cooperative organizations of the principles of legality and cooperative democracy;
- 2) define the general lines of the socio-educational activity of cooperative organizations;
- 3) initiate cooperation and mutual assistance between cooperative organizations in Poland and abroad and organize the exchange of experience between them;
- 4) initiate and organize the activity of cooperative organizations for the benefit of women and youth associated and employed in these organizations;
- 5) initiate and supervise the activity of school cooperatives;
- 6) initiate, elaborate, and pass opinions on drafts of legal acts concerning the entire cooperative movement or matters of essential significance for this movement;
- 7) examine and appraise the forms, lines, and results of the activity of the cooperative movement and present appropriate motions and information to the supreme organs of state power and the supreme and central organs of state administration, and also to the central cooperative unions;
- 8) initiate and organize scientific research, conduct publishing activity in the field of the needs of the cooperative movement and the question of employment in cooperatives, and cooperate with scientific institutions in this domain;
- 9) examine the complaints and motions addressed to it and concerning the activity of the central unions;
- 10) perform the functions of the central unions with respect to cooperatives for which, because of the subject matter of their activity, there is no appropriate central union;
- 11) perform other tasks provided for in this Act, in other acts, and in the Rules.

Art. 260. The organs of the Supreme Cooperative Council shall be:

- 1) General Meeting,
- 2) Praesidium,
- 3) Auditing Commission.

Art. 261. § 1. The General Meeting shall be the supreme organ of the Supreme Cooperative Council. It may pass resolutions in all matters listed in art. 259.

- 2) The exclusive powers of the General Meeting shall include:
  - 1) adopting the Rules of the Supreme Council and amendments thereto;
  - 2) adopting the programmes of activity of the Supreme Council;
  - 3) electing and recalling the members of the Praesidium and the members of the Auditing Commission;
  - 4) examining and approving the financial plans and the annual reports of the Supreme Council;
  - 5) fixing the amount and the date of payment of the fees of cooperative organizations to the benefit of the Supreme Council;
  - 6) passing resolutions in the question of purchase, sale, or encumbrance of immovables.

Art. 262. § 1. The General Meeting shall be composed of:

- 1) representatives of the central unions elected by the congresses of delegates or the councils of the central unions in the manner defined in the Rules;
- 2) delegates of social and scientific organizations referred to in the Rules of the Supreme Council.

§ 2. The number of representatives and the number of delegates and their term of office shall be determined by the Rules of the Supreme Council.

§ 3. The General Meeting may also include cooperative activists elected by the General Meeting, their number not exceeding one-twentieth of the number of representatives and delegates.

Art. 263. § 1. The Praesidium shall direct the activity of the Supreme Council and represent it in external relations.

§ 2. The Praesidium may pass resolutions in all matters falling within the competence of the Supreme Council, not reserved for the exclusive competence of the General Meeting.

Art. 264. The Auditing Commission shall control the activity and finances of the Supreme Council.

Art. 265. § 1. The Praesidium and the Auditing Commission shall be composed of members of the General Meeting elected by secret ballot from amongst an unlimited number of candidates.

§ 2. The number of the members of the Praesidium and of the Auditing Commission, the detailed principles of their election and recalling, and their term of office shall be determined by the Rules of the Supreme Council.

Art. 266. The expenditures of the Supreme Council shall be covered out of the fees paid by the central cooperative unions and by cooperatives with respect to which the Supreme Council performs the functions of the central union.

Art. 267. The detailed principles and mode of activity of the Supreme Council shall be determined by the Rules. The Rules and the amendments

thereto shall become effective after the Voivodship Court in Warsaw, in non-litigious proceedings, has declared them consistent with the law.

### PART III

#### Changes in the Binding Provisions and Temporary and Final Provisions

##### DIVISION 1

##### CHANGES IN THE BINDING PROVISIONS

Art. 268. The following changes shall be introduced in the Civil Code:

1) in art. 244:

a) in § 1 the words: "the cooperative right to the dwelling in building and housing cooperatives" shall be replaced with the words: "the ownership-type right to the dwelling in housing cooperatives";

b) in § 2 the words: "The cooperative right to the dwelling" shall be replaced with the words: "The right to the dwelling of the ownership type";

2) art. 280—282 shall be deleted.

Art. 269. The following changes shall be introduced in the Code of Civil Procedure:

1) in art. 833 § 3 the words: "to the active debts of members of industrial productive cooperatives which accrue to them on account of their share in the revenues of the cooperative after the annual account and" shall be deleted;

2) in art. 890:

a) in § 2 in the first sentence, after the words: "remuneration for work", the words shall be added: "including remuneration for members and members of their households in farming cooperatives, specialized agricultural cooperatives, and cooperatives of natural persons running farms, associated in the Central Union of Agricultural Circles and Organizations";

b) § 3 shall be deleted.

Art. 270. In the Act of June 17, 1966, on execution proceedings in administration (Dziennik Ustaw no. 24, item 151 and Dziennik Ustaw of 1975, no. 16, item 91), in art. 9 § 3 the words: "to the active debts of members of the cooperative accruing to them on account of their share in the revenues of the cooperative after the annual account and" shall be deleted.

##### DIVISION 2

##### TEMPORARY AND FINAL PROVISIONS

Art. 271. Intra-cooperative proceedings, proceedings before central unions and before organs called upon to hear cases of disputes, instituted prior to the day of the entry into force of this Act, shall be held according to the to-date regulations.

Art. 272. The to-date regulations shall apply to the claims that arose bet-

ween the member and the cooperative before the day of the entry into force of this Act. However, the provisions of this Act shall be applicable to the responsibility of members of the board and the council toward the cooperative in cases not concluded before the day of the entry into force of the Act.

Art. 273. Within three years of the day of the entry into force of this Act, a simple majority of votes shall suffice to pass the resolution referred to in art. 108 § 1.

Art. 274. § 1. The ownership of land estates constituting the property of the State and cultivated, on the day of the entry into force of this Act, by farming cooperatives, specialized agricultural cooperatives, and cooperatives of natural persons running farms, associated in the Central Union of Agricultural Circles and Organizations, shall be transferred, against payment, to those cooperatives at the request submitted not later than within two years from the day of the entry into force of this Act.

§ 2. The transfer of the ownership of these estates to the cooperatives shall be effected on the basis of a contract concluded in the form of a notarial deed, drawn up on the basis of the decision of the local organ of state administration of the basic level.

§ 3. The Council of Ministers, after consulting the proper Sejm committee, shall define by decree the detailed principles of payment and the scope of exemptions from notarial charges.

§ 4. The State shall enjoy the right of preemption with respect to estates purchased by the cooperative on the principles and in the mode stipulated in the preceding sections.

Art. 275. Industrial productive cooperatives may allocate sums for the social and living fund burdening the costs of its activity, in a percent proportion to the remuneration for work applied in those cooperatives on the day of the entry into force of this Act.

Art. 276. § 1. The cooperative rights to business premises enjoyed by members of housing cooperatives on the day of the entry into force of this Act shall become the cooperative rights to business premises within the meaning of art. 238 § 1. The members who have brought in contributions according to the principles which were in force in housing cooperatives (of the tenancy type) shall be obliged to complement these contributions in keeping with the provisions concerning the transformation of the right to the dwelling of the tenancy type into that of the ownership type.

§ 2. In case of the expiry of the cooperative right to business premises occupied by the renter, the cooperative may demand that the renter pay in five yearly instalments an equivalent of the right to the premises. The payment by the cooperative of the equivalent to the former member or his legal successors shall be effected in the same instalments. At the request of the renter who has made the payment, the cooperative shall be obliged to admit him as a member and allot him the business premises.

Art. 277 § 1. The provisions of art. 208 shall not be applicable if the member has the rights to two cooperative places, one of which is occupied by a renter on the basis of the provisions of the housing law concerning the special mode of letting out places and buildings.

§ 2. If the member has the right to two or more dwellings formed in effect of rebuilding effected during the reconstruction of the building destroyed by war hostilities and the rejoining of the dwelling is not possible due to technical or building obstacles, he may retain the right to only one of them, and shall be entitled to an equivalent of the forfeited rights.

Art. 278. Until the executive regulations provided for in art. 13 and art. 129 of this Act are issued, the to-date provisions shall be applicable.

Art. 279. § 1. The cooperative organizations existing on the day of the entry into force of this Act shall make amendments to their Rules in accordance with the requirements of the Act and in the manner provided for therein. The cooperatives shall notify these amendments to be entered into the register by July 1, 1983, at the latest, and the cooperative unions by July 1, 1984.

§ 2. Until the registration of the new Rules, the provisions of the to-date Rules shall remain in force. However, in case of a contradiction between these Rules and the provisions of the new Act, the provisions of this Act shall be applicable.

§ 3. The Supreme Cooperative Council shall apply to the Voivodship Court in Warsaw for stating the consistency of its Rules with the law by July 1, 1983.

Art. 280. The Act of February 17, 1961, on cooperatives and their unions (Dziennik Ustaw no. 12, Item 61 and Dziennik Ustaw of 1974, no. 47, Item 281) shall lose its validity.

Art. 281. The Act shall enter into force on January 1, 1983.

President of the Council of State: H. Jabłoński  
Secretary of the Council of State: E. Duda

**OUTLINES FOR SOCIO-ECONOMICAL POLICY  
FOR THE YEAR 1993**

**Appendixes to the Law  
issued by Sejm of the Republic of Poland  
on October 17, 1992**

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### I. Policy objectives

1. The transformation of the economy should lead to emerging social market economy in Poland, providing harmony between individual responsibility of man for his family and social solidarity. Achieving this goal proved however, to be more difficult than it was anticipated while the transformation of the economy inherited after nearly half a century of the communist regime had begun. The past three years relentlessly disclosed the weakness of the economy and inefficiency of once created social institutions. The difficulties in adjusting which hampered the economy have its roots in the existing processes as well as in the deficiency of institutional framework and the unawareness presented by numerous groups of the citizens.

The government believes that for the polish reasons of State, for the polish economy there can be no retreat from the direction set three years ago.

2. Creation the efficient, market driven economy which will allow to increase living standards of all the citizens, requires the revision of economical law, structure of ownership, restructurization of national properties and creating institutions which already exist in modern democratic societies. The time provided for implementation of this enormous task is limited. The limits are social impatience and the need and will to join European Communities.

Both, the timing of the process of changes and their final result depend on decisions and choices concerning socio - economical policy, once taken.

3. The polish economy has just started to go out of the recession being a result of the breakdown of the traditional markets caused by political and economical changes in Central Europe and on the territory of former USSR and also by introducing the rules of economic calculation to assess the economical efficiency. The complexity of this task undertaken by the polish society can be clearly seen on the background of these difficult conditions and it is becoming more clear that the successfully reforms depend, in the first place on the forces that polish society and economy possess. The external assistance may support the activities but by no means may it replace own work and selfdetermination.

4. During the coming decade, polish economy will require substantial investments. The preliminary evaluations stipulate that the value of the required means will be approximately equal to yearly national product, excluding the inherited foreign debt.. The government undertakes the steps aimed at removal of legal, structural and institutional constrains which hamper the changes in effectiveness. This process however, requires time and resources and that is why the main objective for the economic policy for the year 1993 is to overcome the recession. Maintaining the growth trends in the economy and conducting the necessary structural reforms will require conscious agreement of the society to restrict the current consumption.

The government will create conditions in order to make investments at the sacrifice of the consumption more attractive for the citizens - by starting up personal investments by the way of purchasing bonds and shares in the enterprises or banks or at last by saving money in the form of bank deposits or shares in insurance institutions. Accumulated savings will create the necessary capital for financing the process of transformation.

Through animation of investments activities, there will be possible to effectively utilize the possessed resources and attracting foreign investors.

5. Drafting the goals of the socio - economical policy for the year 1993, the government has make a choice, the choice which has to take into consideration the current and long term goals. This can be achieved by the policy directed onto:

- 1) Development of private sector of the economy through fostering entrepreneurship, privatization and creation of conditions for foreign investors
- 2) activating the economic prosperity through fostering the demand for local production and creating conditions for making credits cheaper
- 3) protection of the stability of money through of public finances and limitation the inflation

These general goals designate the conditions for the implementation by the government the programs recognized as priorities for 1993 and for the next years:

- new system and privatization of SOEs,
- chances for agriculture and villages
- just and safe state
- of public finances
- social welfare of the citizens
- limitation of unemployment
- fostering economic growth
- good and modern schooling
- availability of flats and development of construction
- effective administration and development of local governments
- economic restructuring of regions.

The government has already taken the appropriate decisions initiating the first five of the above tasks; the next will be successively elaborated and implemented.

6. The new system of enterprises will be created as a result of speeding up the privatization of the majority of SOEs and change of managing system of the remaining enterprises, what will allow to redirect the tasks of this group towards profit and development. The choice of future form of organization or the way of privatization will be determined jointly by the employees of SOEs and the representative of the State Treasury acting on behalf of the owner, according to the stipulations of the SOEs Act. Parallel, the constrains hampering development of SMEs will be successively removed. The development of the system of economic subjects, appropriate for market economy and speeding up the adjustments to modern competition will be the result of this program.

7. The agriculture requires deep restructuring. The drought this year had strengthen the sensivity of the sector for negative impulses. This sector provides mens for living to almost 1/3 of the population and is deciding for feeding the whole nation. At the moment the agriculture is already obtaining credits in order to assist the sector in overcoming the results of drought and for necessary inputs important for agricultural production. The government will develop market institutions stabilizing the conditions of performance and will protect the sector from unfair foreign competition, also will support the development of local farms. This actions will be complemented by long term programs concerning development of the rural districts and implementation of these programs will be supported also with foreign credits.

8. The constriction of market economy requires obeying the laws and security of the economic processes and security of the citizens and the state. The government is determined to fight corruption, smuggling and tax evasions. The government will be creating conditions to improve effectiveness the institutions responsible for protecting the legal system. The services concerning protecting the interests and security of the state concerning its foreign relations, will be strengthened.

9. The state finances are in crisis. The state income diminishes as the result of recession. The appropriate tax service has not been yet organized; many taxpayers fail to fulfil their tax obligations. At the same time the state's spending grow. The reasons of this situation is the delay in changing the forms of financing of the social sphere and growing number of families that have to depend temporally on the social welfare institutions. The renewal of public finances requires actions aimed at increase of the inflow the resources to the budget and at rationalizing the budgetary spending including improvement of the procedures of investing the public resources. Making the citizens aware of the fact that fulfilling the tax obligations is an aspect of solidarity, is also the way to increase social control over public spending.

10. The government believes that even with modest means, it should guarantee for the citizens certain basic social services, employee rights, health and educational services, which provide the social security of the citizens. The reform of many of the institutional solutions is necessary in order to improve management of this sphere, to limit the thriftlessness of means and at the same time to better adjust the variety of the offered services to the actual needs. The government is taking the legislative and organizational actions to enable entering non governmental institutions into construction of modern social policy.

11. Implementation of basic priority programs will create possibilities for regaining development potential by the economy and for introduction of further programs. However at the first place it will mean important changes in the way of functioning of the state concerning the mutual relations between the citizens and the state. This should make easier the construction of social market economy.

## II. Instruments of macroeconomic policy

The activities of the government should be coordinated within the frames of consistent macroeconomic policy, including also partial policies such as monetary, budgetary, tax, price and income.

### 12. Monetary policy

The monetary policy will maintain such way of shaping the emission of money so that its surplus would not generate inflation. Because the internal market will be enriched in 1993 with such new offers of sale as enterprises debts, stocks and shares of privatized enterprises, so maintaining the speed of money circulation on the same level as in 1992 will not be possible. The demand of economic subjects for financial means will grow in connection with introduction of the tax on commodities and services.

If the agreement with the IMF is reached, there will emerge new possibilities of utilizing new foreign credit lines. The condition to absorb these means by the economy is possession ( or possibility to gather ) the appropriate means by the polish borrowers. As a rule the economic subjects do not possess such resources, what results with poor level of utilization of credit lines already accessible or in many cases applying for government guaranties. This is almost not possible for SMEs, especially for the private ones, and causes the delay in transformation of the ownership structure, as a result of lack of knowledge about the rules of obtaining the guaranties. There are many cases known that the credit lines are open but not utilized and the budget has to cover the expenses of maintaining these lines. Maintaining present conditions for bestowal the local credits will not allow for improving absorption of foreign credits and will therefore delay restructuring of the economy.

The government will foster introducing credit guaranties and insurance systems allowing to diminish the risk of the banks and therefore to reduce the credit costs. These systems could be especially applied in the following fields:

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exports and investments in modernization to support exports  
 agriculture and housing  
 investments in restructuring, mostly of short period of implementation,  
 based on latest technological developments and meeting environment  
 protection needs  
 entrepreneurship support

It is proposed to maintain the hitherto rule of crawling rate of currency exchange set in the relation with the currencies basket.

The decreasing inflation and the above mentioned actions will favor the decrease of interests rate. The government will support this trend. Decreasing of interests rate is one of the basic conditions to trigger investments and also an element supporting aspirations of employees to participate in the privatization process, especially when leasing of the state properties is concerned.

### 13. Budgetary policy.

In 1993 the budget of the state will be constructed in the way, that the volume of the deficit measured with the relation to the gross national product, will not be bigger than in 1992. This requires the stabilization of the budget income and restructuring its spending towards gradual development of active spending on investments related to social welfare, and requires the rationalization of the remaining spending basing on the introduced changes in financing the social services.

The budget will be based on the following rules:

- 1) The increase of the participation of budget income in the national product will be modest in order not to create important decrease of market demand from the side of families and enterprises.
- 2) The level of subsidies will be maintained, however the form of subsidies will be verified, while the total value of subsidies can not exceed the volume of 1992; the actions towards rationalization of utilization of the financial means provided by subsidies will be undertaken together with actions aimed at rationalization of energy consumption.
- 3) Introducing the changes into level and structure of budgetary spending for direct and indirect support of investments concerning:

verification of the scope of financing the  
 investments started in the past as so called  
 central investments

avoiding commencement of new, large  
 investments financed by the budget

increasing the means supporting development of financial infrastructure enabling fostering by the state investment initiatives.

4) [...]

5) [...]

6) [...]

#### 14. Tax policy

In 1993 there will take place:

- 1) Introducing the tax on services and commodities
- 2) starting the system of monitoring the tax holidays provided in the past years [...]
- 3) Introducing the system of modification of the tax on salaries rise as stipulated in the SOE Act
- 4) Abolishment of obligatory dividend in the SOEs and the fees for using the properties by the one person companies of the State Treasury. Both these burdens were settled by the SOEs by deducting the appropriate amounts from the profit and transferring in to the Treasury. [...]
- 5) Introducing the rule, that the sums not exceeding four times average salary spent for purchase of stocks from the State Treasury and the stocks of privatized enterprises, will be excluded from the personal income taxation. [...]
- 6) maintaining the hitherto relieves in the income tax for the subjects operating in the regions endangered with structural unemployment, and granting tax incentives for polish investors starting their activities in this regions and creating the jobs.
- 7) [...]

#### 15. Price policy

In 1993, concerning the policy of the prices controlled by the state, the government will create conditions to squeeze inflation and to foster the process of adaptation of the enterprises by:

- 1) modest and extended in time process of controlled prices growth
- 2) [...]
- 3) obligatory reassessment of the fixed assets by 28% as an average, according to equal rules for all the economic

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subjects. This will create possibility for those subjects to obtain means for investments, however it may generate some inflation.

**16. Income policy.**

The goal will be to maintain real demand of families. This requires undertaking following settlements:

- 1) ensuring constant minimal pay in the public economy. [...]
- 2) maintaining the tax on growth of salaries included into the costs, as stipulated in the regulations concerning SOEs and companies owned by State Treasury. [...]
- 3) the government is undertaking the restoration of the public services sector. The government shall - depending on its financial capacities - strive towards proper shaping of revenues of employees in the budget sphere, giving raises in the 3rd quarter of 1993. [...]
- 4) [...]
- 5) to promote a more unified participation of various social groups in the costs of the transformation process, it is proposed to introduce changes in personal income tax through:  
  
establishing an additional tax bracket with tax rate 50%;  
renouncement of the legal rule of valuation of the border values of the tax brackets in 1993,  
cumulative calculation of tax advances in the course of the year, in order to provide payments proportional to the income. [...]

**III. Science - ecology - security**

**17. Scientific policy**

**18. Ecological policy**

**19. Economic and defence policy**

**20. Policy of internal security**

#### IV. Policy towards enterprises

21. SOEs are the dominating form of organization of economic entities from the standpoint of size of production, offered places of employment, involvement of national property and sources of revenues for the budget. Therefore, manners of stimulating economic development cannot be considered without special attention being given to this group of entities.

22. In 1992 work will be finalized on the draft act on the manners for representing the State Treasury and managing its property. The purpose of this act is the creation of a new form of performing the function of owner towards state property. Aside from the already existing State Agency for Agricultural Properties, which performs the function of owner towards state farms, it is necessary to establish an institution which would perform these functions towards state property in other sectors of the economy. The scope of state property and the awareness, that excessive centralization of ownership functions can lead to centralization of rights and creation of an institution unable to function effectively, lead to a search of intermediate solutions, enabling a diversified attitude to various components of state property located in different sectors of the economy. [...]

Rules for the management of selected sections of state property will be vested in the funds of the State Treasury, which will perform the function of owner towards these sections. This means that these funds would have the right to make privatization decisions and its manners, lease and sale. The funds would also supervise and evaluate the work of persons managing the enterprises. [...]

23. Regulating the rules for managing the property of the State Treasury leads to changes in the current scope of rights of the founding bodies towards the SOEs. These rights will be taken over by the above mentioned funds. Reform of the founding bodies will enable the improvement of functioning of the administration and its adaptation to the needs of market economy.

24. Separation of institutions which will manage the property of the State Treasury, as well as final decisions on the scope, form and rules for reprivatization, should support the privatization processes. In 1993 changes will be introduced into the legislation, which will allow for a more active participation of employees in choosing the options for the transformation of state enterprises.

According to the proposed amendment of the Act on State Enterprise and the Act on Privatization of SOE's:

- 1) employees of state enterprises which demonstrate positive economic results make the choice of the privatization method within about three months. Representatives of the employees in negotiating with the management will be able to choose:
  - sale of the enterprise to a large domestic or foreign investor,
  - sale of shares and stocks in a public tender;
  - buy-out of the enterprise by the management or employees;

- entrusting a bank or an investment fund (eg. pension fund) with a majority of the shares (controlling package).

- 2) In companies which lost their financial liquidity, employees can also participate in privatization, but under the condition of entering into conciliatory agreement or bank conciliatory proceeding with the creditors. A condition for such agreement is the preparation of a program for improving the standing of the enterprise. [...]

A second method of privatization, available to enterprises with no financial liquidity, is entering into a management contract with a selected group of specialists. [...] The management would gain the right to increase its future owner's share in the enterprise, from the value established in the original contract (eg. 3%) to a value increasing according to the improvement of the company's results (but no more than 20%). Similarly, the contract would define the manner for increasing the ownership shares of the employees, from the original 10% up to 40%, as the results of the company improve.

- 3) Small state-owned enterprises - regardless of their financial situation - will be able to establish employees' companies, which will take the assets under their management on the basis of a lease contract, or will purchase the assets. In the case of indebted enterprises the employees' companies will have to obtain bank's approval for leasing or purchase.
- 4) enterprises which do not select the privatization method themselves will be transformed into single-owner companies of the State Treasury by force of law, based on the decision of the Minister of Privatization or the founding body (representing the State Treasury). Such enterprises can be managed under management contracts. [...]
25. The above rules of privatization do not include certain groups of enterprises, namely:

- SOEs included in the Mass Privatization Program,
- SOEs which are crucial for the functioning of rail, pipeline and air transportation, as well as telecommunications,
- SOEs of special importance (eg. industrial enterprises located at penitentiary institutions, SOEs which have strategic importance for flood prevention and providing appropriate water supply).

Rules for the functioning of the above listed groups of enterprises will be defined by the Council of Ministers. The rules for privatization of the agrarian sector enterprises will also be different, as the participation of agrarian producers is also assumed, alongside participation of the employees. [...]

26. In 1993 a special legislative regulation will be introduced (the act on financial restructuring of enterprises and banks), which will allow those enterprises which have a ready restructuring program to enter into conciliatory agreement with the bank and at least half of the creditors, on postponing the payment of the debts or replacing the debt with stocks of the enterprise transformed, under this procedure, into a single-person company of the State Treasury. [...]

27. Work is in progress, together with the World Bank, on establishing in 1993 an intervention fund, which could be the source of credit for enterprises which have restructuring programs but are not able to acquire full resources necessary for the implementation of such a program. [...]

28. Institutions supporting the above described processes will also be the resources obtained under international assistance for the purpose of training of management and experts preparing restructuring programs; as well as the credit guarantee facility for SMEs located in regions where the economic situation is difficult.

29. Implementation of this scenario of changes in SOE management and their privatization is related chiefly to the implementation of the "Pact on State Enterprise". Solutions of the Pact will be supported by active industrial policy. Its goal is increasing effectiveness, competitiveness and innovations in the enterprises; and in the nearest future: stopping the recession, commencing a consequent change of the structure of the industry, implementation of ownership transformations, stimulating the development of SMEs. Industrial policy will be implemented with the maintenance of problem and sectoral aspects. These two options should not be mutually exclusive.

30. The already performed sectoral studies allow for the separation of several sectors of the industry which require special solutions in the restructuring programs. These sectors include:

- defence industry, fuel and energy sector, industries which are energy- and capital-consuming (steel industry, cement industry, heavy chemical industry, wood and paper industry) - that is, the so-called strategic sectors,
- industries: petro-chemistry, electronics, packaging, pharmaceutical, production inputs for agriculture, light industry, equipment for environment protection - the so-called priority sectors.

The cost of restructuring will be borne by the companies themselves and their new owners. However, part of them will require government assistance in the form of credit guarantees and money for debt reduction. [...]

The government shall present proposals for actions in the years 1993-2000 in the form of a long-term policy program. [...]

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**V. Economic cooperation with foreign countries**

31. [...] The basic instruments supporting export in the year 1993 shall be:

- internally consistent system of credits and credit guaranties for export of goods, especially investment goods; [...]
- modified, as a result of negotiations, rules for utilizing some foreign credits;
- improving the functioning of the system of credit export insurance on trade risk and the creation of a system of insurance on non-trade risk (political risk insurance and disaster insurance);
- making banking procedures more effective, introducing changes in foreign currency regulations which would create conditions for a fuller utilization of foreign financial resources;
- continuation of the refund of the custom duty and turnover tax on imported raw materials and components for export production. After the introduction of the VAT, the exporters will gain an even bigger tax deduction, as they will have the VAT refunded;
- continuation of the deduction of tax on income growth for exporters;
- further privatization of the foreign trade sector. [...]

32. Condition of commercial treaties with abroad.

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**VI. Agriculture**

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36. In 1993 the activities of the government will be concentrated on solving the economic problems related to the current production and economic situation in agriculture

and in the agrarian market, and on the creation of conditions for permanent effectiveness and structural changes in the agriculture. [...] These activities will concentrate on:

- 1) maintaining in the spring the credit line with lower interest rate (less than 20%), which is designated for the financing of production investment, such as the purchase of seed, mineral fertilizers, pesticides, fodder and fuel. The difference in the interest rate will be covered from the state budget and resources designated for restructuring of agriculture;
- 2) providing direct production assistance to farmers who bore the largest losses due to drought and limited inputs; [...]
- 3) extending the scope of the activities of the Agricultural Market Agency, which - aside from intervention purchases and collecting state reserves - will actively participate in wholesale trading and international trade of agrarian and food products, preventing the instability of the food market, both from the standpoint of prices and supply;
- 4) maintaining the instruments regulating foreign trade of agrarian and food products, which were periodically introduced in 1992, and which limit excessive export of agrarian products (especially for lowered prices) and cause the influx of products (especially fodder and fodder mixers for prices lowered due to the temporary suspension of custom duty);
- 5) applying preferential credits for the purposes of purchase and maintenance of agricultural goods, in order to decrease the costs and losses related to the seasonal agricultural production;
- 6) maintaining the system of establishing minimum prices for the basic agrarian products;
- 7) introducing supplementary payments in the import of basic agrarian and food products and other instruments for the protection of domestic producers.

37. As the agrarian market stabilizes, long-term activities shall be supported, whose goal is the improvement of effectiveness of agriculture and increasing its competitiveness, through creating conditions for more rational use of production potential. In 1993 activities shall be undertaken for:

- 1) establishing an effective system for the creation and propagation of biological, organizational and technological progress, which would limit production costs in agriculture;
- 2) supporting modernization and restructuring processes in agriculture and developing agrarian infrastructure (especially water supply and sewage), with the utilization of resources from domestic credits and foreign assistance money designated for the support of such processes in agriculture;

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- 3) changes of the ownership, structure and organization of state farms, performed by the State Agricultural Property Agency. Preferences will be given for using land for the increase or creation of family farms;
- 4) multifunctional development of the countryside. In areas which are backward and threatened with the highest unemployment rate, the development of services, private food- and agrarian products processing, crafts and trade will be supported. A system for the training for countryside people in professions useful outside of agriculture will be created;
- 5) creation of conditions for the recreation and development of authentic rural and agrarian cooperatives. [...]

38. The transformation processes will be supported in 1993 also through subsidies and preferential credits for selected purposes.

#### **VII. Social policy**

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#### **VIII. Regional policy**

50. Regional policy concentrates currently on the results of transformations, which are specially strong in regions undergoing economic restructuring, and which are threatened with high structural unemployment. [...]

51. In the voivodships of Katowice, Łódź, Wałbrzych, in north-eastern Poland and in some regions of south-eastern Poland, which are dominated by huge SOEs, work shall be

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continued on creating ways and institutions which will enable effective influencing the restructuring processes. [...]

Activities envisioned for these regions include:

- successive removal of barriers and legal gaps in the restructuring processes,
- creating special economic solutions which promote the development of small businesses (incubators, leasing of machinery and equipment, easier access to land, utilization of part of the assets of SOEs).

52. Economic support in regions threatened with high structural unemployment will be implemented in 1993 through:

- 1) better use of the already existing instruments, such as accelerated depreciation, subsidies for infrastructure investments; income tax holidays when the investment of a foreign entity exceeds 2 million ECU; granting entities using the "tax card" the right to have more employees; deductions in income tax obtained due to professional training of employees;
- 2) introduction of new solutions, such as:
  - periodic deductions in income tax for domestic investors generating employment in these regions;
  - preferential credits for "small business" investors, provided that foreign assistance resources are obtained for this purpose;
  - credit guaranties for SMEs, issued by the Credit Guarantee Fund, which is being created;
  - subsidies for infrastructure investments instead the subsidies for the creation of new workplaces, which were introduced in 1992.

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Annex 2

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## **I. selected elements connected with condition of the economy**

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2. [...]
3. [...]
4. [...]
5. [...]
6. [...]

## **II. Projection of macro ideas**

## **III. Financial outcome of the changes suggested by the government**

## **IV. Assesment of anti and pro inflation factors mentiones in the "Outlines" together with evaluation their quantitativ impact onthe inflation rate**

## **V. Elements of industrial policy**

The main goal of the government in 1993 is to support the economic tendencies and creating a climate favorable for investments in enterprises (public and private) which have higher than average effectiveness.

The activities of the government shall focus on:

- 1) debt reduction for those SOEs which have restructuring plans (debt reduction act);
- 2) preferences (accelerated depreciation, income tax deductions) for entities investing in regions threatened with unemployment;
- 3) creating - in agreement with the World Bank - a restructuring fund for SOEs. The creation of such a fund depends on the acceptance by the IMF of the program of socio-economic policy;
- 4) organizing a Credit Guarantee Fund for SMEs;
- 5) introducing income tax deductions for legal and natural persons reinvesting their profits;
- 6) developing active forms for combatting unemployment (training in new professions, loans for people becoming self-employed, subsidies to infrastructure investments in the local markets);
- 7) simplifying the rules for leasing;
- 8) changing the manners of financial management of SOEs - increasing the value of depreciation deductions, renouncing the current formula for calculating dividend and payments for the utilization of State Treasury property;

- 9) continuing the restructuring processes of coal mines, state railways and armament industry.

## **VI. Incentives for savings and investment**

[...] It needs to be stressed that in the opinion of the government the fundamental activity in this respect is accelerating privatization of most of the SOEs and changing the rules of management of their remaining part, in order to turn them into entities oriented in profit and development. At the same time the government will be supporting individual entrepreneurship and creating conditions for attracting foreign investors. [...]

Stimulation of savings of the citizens will be supported by the creation of various ways of transforming these savings into active capital (personal investment activities, purchase of stocks of privatized SOEs, bank deposits and fees in insurance companies which will perform the function of an investment institution). Income tax exemption shall be granted for amounts not exceeding four times the average salary, which are used for the purchase of shares or stocks from the State Treasury and stocks of privatized SOEs. Expenses for that purpose made by legal persons will also be made tax-free. [...]

Mobilization of resources for investment purposes will also be supported by:

- increasing the own resources of SOEs due to amortization and revaluation of fixed assets;
- increasing the absorption of foreign credits through creation of appropriate conditions for foreign investors; [...]
- inspired by the government introduction of a system of credit guaranties and insurance, which would lower the bank's risk;
- preparation and implementation of rules for budget's participation in investments in the area of economic infrastructure;
- designating part of the budget resources for quick-return projects (development of border crossings, energy-savings investment in the so-called budget sphere);
- increasing resources in the state budget which will support the development of financial infrastructure.

[...]

## **VII. Activities promoting better credit absorption**

In 1993 the following activities are envisaged:

- commencement of bank conciliatory procedure, which will allow to free some state banks and the Food Economy Bank from part of the "bad loans";
- preparing state-owned banks for privatization;
- maintenance of preferential credits for farmers;

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- improving the rules of housing credits through increasing the maximum credit amount (from 36 to 47 times the monthly household income) and lowering the amount of capitalized interest from 125% to 110% of the prime rate of the NBP;
- creation of credit insurance institutions for SMĚs;
- establishing a credit guarantee institution for exporters;
- new rules for State Treasury guaranties for foreign credits;
- gaining access, as a result of renewal of the agreement with the IMF, to new foreign credit lines;
- possible renegotiations of some credit agreements with foreign partners.

**VIII. Problems of monetary policy and social welfare**

**IX. The salaries for the employees of the budget sector**

**X. The problems of the volume of investments.**

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**EXCERPTS FROM  
THE "PACT ON STATE ENTERPRISE"**

**Excerpts from the Act of July 13, 1990  
(Journal of Law #51, item 298)**

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Excerpts from the Act of July 13, 1990 on the Privatization of State-Owned Enterprises (Journal of Laws #51, item 298), with subsequent changes, and with consideration of changes proposed under the Pact on State-Owned Enterprises.

Art.1. Privatization of a state-owned enterprise means the sale to third parties shares or stocks belonging to the State Treasury, in companies created through transformation of state-owned enterprises; or the disposal of all material and non-material components of the assets of a state-owned enterprise, under rules specified in the act.

Art.2. The Council of Ministers, by way of decree, defines the types of companies created as the result of transformation of state-owned enterprises, whose shares and stocks may be sold after receiving the approval of the Council of Ministers, and types of state-owned enterprises whose liquidation for privatization purposes requires the consent of the Council of Ministers.

Art.5.1 The Minister of Privatization can transform a state-owned enterprise into a company:

- 1) at the motion of the founding body, submitted after receiving the opinion of the director and employees' council'
- 2) at a joint motion of the director and employees' council, submitted after receiving the opinion of the general assembly of employees (delegates), and after consultations with the founding body,
- 3) at the motion of a representation of individual farmers or fishermen who are constant suppliers of raw materials for the enterprise's production. (...)

5.2.3. The Minister of Privatization may refuse to perform the transformation of a state-owned enterprise into a company due to the economic, financial or organizational situation of the enterprise, or important interests of the state (...)

Art.8.1. The transformation of a state-owned enterprise into a company is a change of the legal status of the entity and does not cause any changes in the rights and obligations resulting from civil and legal relations and administrative decisions.

8.2. A company created as the result of a transformation of a state-owned enterprise remains a single-person company of the State Treasury until the time when at least one stock is sold to a third party (...)

Art. 19.1. Within two years from the transformation of the state-owned enterprise into a company the Minister of Privatization shall offer for sale, in a manner described in art.23. all stocks of the company. (...)

Art.22.1. Before the sale of the stocks the Minister of Privatization, with the consent of Minister of Finance, can, acting on behalf of the State Treasury, take over free of payments part or whole of the company's debt or pay it off. (...)

Art.23.1. With the restriction of Art.24 - 24 b, stocks belonging to the State Treasury are sold in the following manner:

- 1) in a competitive bidding,
- 2) on the basis of a public offer,

- 3) as a result of negotiations undertaken on the basis of a public invitation (...)

Art.24.1 Employees of a state enterprise transformed into a company can receive free of charge 10% of the overall number of the stocks of this company, owned by the State Treasury.

24.c. The stocks, described in art.24 and 24.b, cannot be the object of public trade before the end of one year since the first stocks were sold under general rules.

#### Chapter 4 Privatization through liquidation of a state-owned enterprise (direct privatization)

Art.37.1 The founding body, after receiving the approval of the Minister of Privatization, can liquidate a state enterprise in order to:

- 1) sell it,
- 2) bring it into a joint stock company or a limited liability company as a non-monetary contribution,
- 3) give it into paid use to a company which fulfills the conditions described in art.54.

37.2. Disposal of property for a purpose described in par.1 are done for the benefit of individual or legal persons, with the exception of state-owned enterprises, and state organizational entities, which are described in article 29. (...)

Art.39.1. The founding body commences preparatory procedure in order to liquidate a state-owned enterprise for the purpose described in art.37.1, p.1 and 2, at its own initiative. It can also start the procedure:

- 1) at a joint motion of the director and employees' council, submitted after receiving the opinion of the general assembly of employees (delegates),
- 2) in a state-owned enterprise managed on the basis of contract, which is described in chapter 8a of the Act on State-Owned Enterprises, of September 25, 1981 (...) [it is the contract for management of the state-owned enterprise, entered into by the State Treasury, represented by the founding body, and a legal or individual person - the so-called manager's contract]:
  - a) at the motion of the board of directors of the enterprise,
  - b) at the motion of more than a half of the total number of employees, submitted no earlier than 30 days before the expiry date of the manager's contract,
- 3) at the motion of more than a half of the total number of employees of an enterprise, in which there is no employees' council. (...)

Art.45.1. The founding body sells the enterprise or its organized part by way of:

- 1) public bidding, oral or by tender,
- 2) negotiations commenced on the basis of a public invitation. (...)

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Art.57.1. The enterprise may be given to a company for use for a fee, provided that:

- 1) the request for receiving the enterprise to use for a fee was submitted by entities described in art.39.1, p. 2, 3b, or p.4,
- 2) the company, established after the submission of the request, which is described in p.1, consists of more than a half of the total number of employees of the state enterprise (...),
- 3) the stock- or shareholders of the company are only individuals, who reside permanently in Poland, unless the Minister of Privatization, at the motion of the founding body, allows Polish legal persons to participate in the company,
- 4) the paid stock or founding capital of the company is equal to at least 20% of the joint value of the founding fund and the enterprise fund (...).

Art.60.1. The enterprise or its organized part is given into paid use on the basis of a contract entered into between the company and the State Treasury, for a period of time no longer than 10 years.

60.2. In the contract, described in par.1, the parties may decide that:

- 1) after the expiration of the period, for which the contract was established, and the fulfillment of conditions defined in the contract, the ownership right to the contract will be transferred to the company,
- 2) after the expiration of the contract period, the company has the priority right to purchase the assets it has been using; price is established after the contract expires. (...)

Art.61. The ownership of the object of the contract may be transferred to the company before the contract period expires, provided that the company has paid at least 49% of the value of the enterprise (...) as specified in the contract.

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**CARESBAC-POLSKA S.A.**

**Brochure**

7/81

## INFORMACJA OGÓLNA

SBAC-Polska jest zarejestrowaną w Polsce firmą in-  
ną nastawioną na współpracę z małymi oraz średnimi  
ni, polskimi przedsiębiorstwami. Powstała w 1991 ro-  
szawie, stawia sobie za podstawowy cel współfinan-  
sowania i wspierania przedsiębiorstw w dziedzinach o prioryte-  
cie dla polskiej gospodarki.

ycje CARESBAC-Polska będą połączone z pomo-  
czną i szkoleniami organizowanymi przez inne  
odowe organizacje pomagające Polsce. Ponadto  
AC-Polska pragnie współpracować z polskimi przed-  
ami, których kierownicy oraz właściciele wyróżniają  
im poziomem fachowości i gwarantują rozwój przed-  
a w przyszłości.

SBAC-Polska nie jest bankiem i nie udziela kredytów  
h, natomiast podejmuje się współfinansowania przed-  
godnie z poniższymi zasadami:

### Wielkość Inwestycji

USD 75,000 do USD 300,000, w przeliczeniu na  
złote polskie

### Formy Współinwestowania

działy kapitałowe oraz formy pochodne  
opcje i długookresowe opcje nabycia majątku  
działy preferencyjne z możliwością zamiany na mają-

zyczki z możliwością zamiany na udziały  
współfinansowanie z możliwością udziału w zyskach  
z współfinansowanie mieszane (np. pożyczka polną  
ona z możliwością udziału w zyskach)

### Charakterystyka Przedsiębiorstwa

Pracownicy od 15 do 100 pracowników  
Przebieg roczny pomiędzy USD 150,000 do USD  
300,000, w przeliczeniu na złote polskie  
Wartość posiadanego majątku od USD 50,000 do USD  
300,000, w przeliczeniu na złote polskie

### Preferowane Działy Gospodarki

Rolnictwo i przemysł rolny-spożywczy tj. produkcja  
roślinna i zwierzęca, przetwórstwo, opakowania i dys-  
trybucja produktów rolnych oraz produkcja i dystrybu-  
cja artykułów do produkcji rolnej  
Przemysł lekki produkujący na eksport  
Przedsięwzięcia działające na rzecz budownictwa  
Podstawowe usługi dla przedsiębiorstw, np. usługi  
księgowe, informatyczne oraz drukarskie  
Przedsięwzięcia działające na rzecz ochrony środowiska  
Inne przedsięwzięcia korzystne dla kraju i jego mieszc-  
kańców

### Formy Własności

O współfinansowanie mogą ubiegać się zarejestrowane  
w Polsce przedsiębiorstwa prywatne z co najmniej 51%  
udziałem strony polskiej.

### Procedura Uzyskiwania Współfinansowania

Pierwszym krokiem jest wypełnienie kwestionariusza  
przygotowanego przez CARESBAC-Polska, który  
można uzyskać pod niżej podanym adresem

▲ CARESBAC-Polska jest spółką prawa polskiego o kapitale  
mieszanym. Współinwestowanie z udziałem CARESBAC-Polska  
odbywa się na warunkach komercyjnych, nie są przewidziane  
darowizny i bezzwrotne pożyczki. CARESBAC-Polska może  
na konkurencyjnych warunkach służyć doradztwem w spra-  
wach finansowych związanych z prowadzeniem przedsięw-  
iowania.

## GENERAL INFORMATION

▲ CARESBAC-Polska is a Polish-registered investment com-  
pany that focuses on the financial and business needs of small-  
and medium-sized private Polish enterprises. Established in  
Warsaw in 1991, CARESBAC-Polska's primary function is to  
provide risk-capital financing to existing enterprises that de-  
monstrate a high potential for success and are engaged in eco-  
nomic activities of high priority to the Polish economy.

▲ CARESBAC-Polska generally will invest in combination  
with technical and training assistance from other private and  
public international organizations providing foreign aid to Po-  
land. Above all, CARESBAC-Polska seeks to work in partner-

ship with Polish enterprises whose employees, managers and  
owners demonstrate a high degree of integrity, competence and  
commitment to success in a free-market economy.

▲ CARESBAC-Polska is not a bank and does not provide  
bank credit financing. Instead, CARESBAC-Polska primarily  
provides long-term risk-capital financing in accordance with  
the following general guidelines:

### Investment Amounts

USD 75,000 to USD 300,000 in Polish zlotys

### Investment Structures

Equity and quasi-equity  
Equity options and warrants  
Preferred stock convertible into equity  
Debt convertible into equity  
Participating and hybrid instruments  
Lease financings with equity rights

### Business Size

Employment of 15 to 100 persons  
Annual turnover between USD 150,000 and USD  
1,500,000 in Polish zlotys  
Current owner's equity between USD 50,000 and USD  
500,000 in Polish zlotys

### Priority Sectors

Agro-food industry from production through retailing  
Light industries for export  
Businesses supporting the housing industry  
Essential business services, like printing  
Businesses helpful to the environment  
Other businesses helpful to Poland and its people

### Registration

Polish-registered private enterprises with at least 51%  
Polish ownership

### Application Procedure

To begin, obtain and complete a Company Profile from  
CARESBAC-Polska in Warsaw at the address below

▲ CARESBAC-Polska operates under Polish law as a joint-  
stock company. It invests on strictly commercial terms and does  
not provide grant or subsidy funding for any purpose. CARES-  
BAC-Polska sometimes will provide other business and finan-  
cial advisory services to clients at competitive market rates.

**BISE S.A.**  
**BANK FOR SOCIO-ECONOMIC INITIATIVES**  
**ANNUAL REPORT**  
**1991**

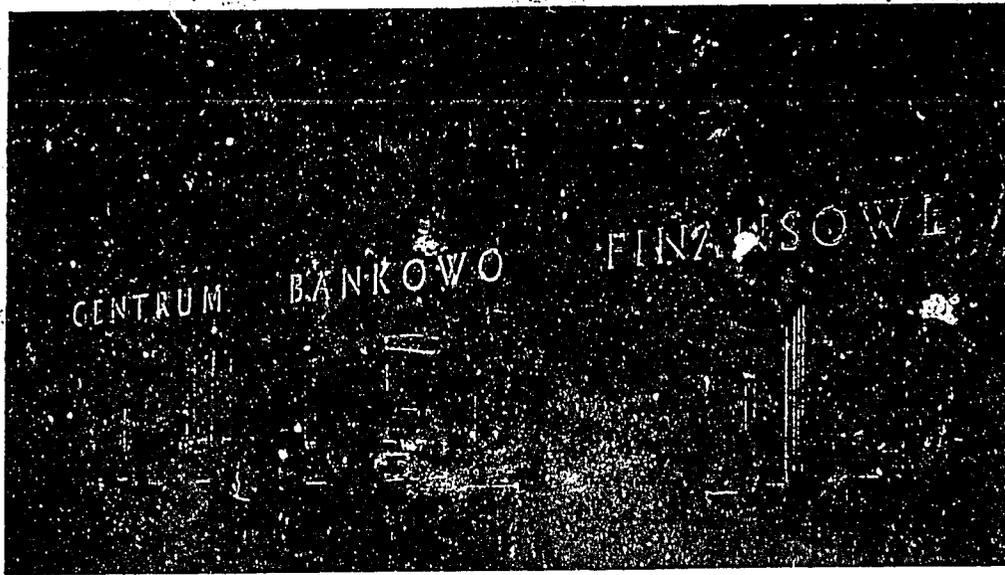
**Bank Inicjatyw Społeczno-Ekonomicznych S.A.**  
**Bank for Socio-Economic Initiatives**  
**00-400 Warsaw, 6 Nowy Świat Street**

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Bank  
for Socio-Economic  
Initiatives

Annual report 1991



# Annual report 1991



**Summary**

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*Dear Sir or Madam,*

*I am pleased report on with the activities of the Bank for Socio-Economic Initiatives. This is the first complete annual report of BISE, a new banking institution operating since July 1990.*

*The main thrust of the Bank's activity is to cooperate with small and medium sized enterprises. Their rapid development was one of the most significant features of the current transformation of the Polish economy of the past two years. We not only offer them investment loans on favourable conditions, but also provide counsel and assistance in business management and establishing mutual links between enterprises. Our experience shows that such help is indispensable, especially to the numerous entrepreneurs who have recently started operations in Poland.*

*We try to maintain close relations with all kinds of subjects newly established in the socio-economic sphere, such as foundations or associations, i.e., non profit groups. They benefit from the cooperation with the Bank, which helps them to attain their statutory goals and most efficiently manage their financial resources.*

*Considerable assistance has been given to us by our French shareholders: Caisse Centrale de Crédit Coopératif and Crédit Foncier de France. They have given BISE employees many opportunities to upgrade their qualifications, to compare the situation as it exists in Poland with that of other countries with developed banking systems. As a result, BISE has been able to introduce a number of solutions never tried in Poland before, e.g. the Bank's Guarantee Fund, based on the idea of mutual sharing of credit risk between a bank and the borrowers.*

*We anticipate that the Bank will continue to develop rapidly in the next few years. The stock capital has nearly doubled since the Bank was established. The next issue of shares, for current and new shareholders, is planned for the near future. Early in 1992 the range of services was broadened considerably, foreign operations included and a new Branch Office was opened in Apollonia in order to facilitate the task.*

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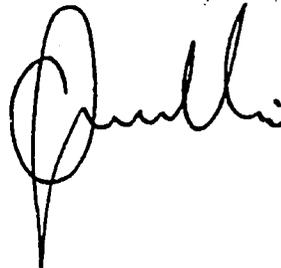
*When BISE has developed from a lending-only bank into a depository institution as well, the resources at our disposal will increase and our lending capacity should expand accordingly. We are fully aware, however, that with the growth in lending capacity must come a parallel growth in our ability to analyze lending proposals, in order to prevent any decisions which might expose our clients' deposits to risk.*

*The expansion of lending operations in the coming year will also be possible via our broader access to credit lines offered to Poland by international financial institutions. We are confident that our talks on the subject will be successful and that in 1992, in addition to the already-functioning credit line of the French-Polish Partnership Fund, other credit lines will be open to us as well. We anticipate becoming a foreign currency bank in mid-1992, which should further assist us in meeting the needs of our clients.*

*In only a short period of time, we have been able to create stable conditions for the rapid and continued growth of our young institution. Knowing this has brought the management a great deal of satisfaction. The knowledge and experience gained in analyzing and evaluating the credit proposals, and in seeing these proposals realized, makes us optimistic about the future. I have confidence that BISE's progress will proceed hand in hand with the development of small business sector in Poland.*

*We are grateful to our shareholders for the confidence they have shown in us, and we thank the Bank Council and employees for their conscientious work and devotion.*

*Włodzimierz Grudziński*



*President*

**Bank Council**

**Wojciech ARKUSZEWSKI**  
Member of the Presidium  
of the National Commission  
of the "Solidarity" Trade Union; MP

**Tomasz BOGUSŁAWSKI\*\*\***  
Director of Privatisation Department,  
Industrial Development Agency

**Jean BUSSON \*\***  
Secrétariat Général,  
Crédit Foncier de France

**Marek CICHY \*\*\***  
Vice-President,  
Industrial Development Agency

**Stanisław CHEŁSTOWSKI**  
Editor in Chief of "Życie Gospodarcze"  
(economic weekly)

**Maria DUTKIEWICZ-  
STRZYCZKOWSKA \*\*\***  
Liquidator of Market Development  
and Trade Demonopolization Fund

**Krzysztof HERBST**  
President, Foundation for Socio-Economic  
Initiatives (FISE)

**Helena GÓRALSKA**  
President, BISE Bank Council,  
MP

**Jacek KOCHANOWICZ**  
Doctor of Economic Science,  
Warsaw University

**Oktawian KOCZUBA \*\***  
Advisor to the President of Market  
Development and Trade  
Demonopolization Fund

**Krzysztof KONASZEWSKI \*\***  
Member of the Board,  
Industrial Development Agency

**Leszek PAWLICKI \*\***  
Vice-President,  
Industrial Development Agency

**Marie Hélène  
PIRLOT de CORBION \*\*\***  
Secrétariat Général,  
Crédit Foncier de France

**Bartłomiej PIOTROWSKI**  
Secretary of State, Ministry of Labour  
and Social Policy

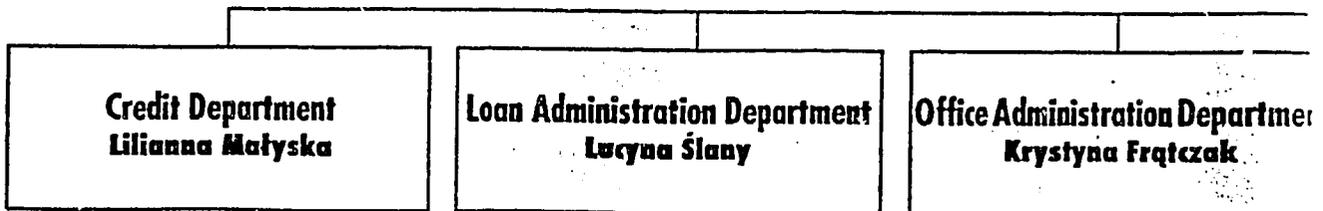
**Tomasz PODGAJNIAK**  
Vice-President, National Foundation  
for Environmental Protection

**Karol SACHS**  
Vice-Director, Development Department,  
Crédit Coopératif

**Anna TRUSZKOWSKA**  
Advisor to the Minister of Labour  
and Social Policy

**Andrzej WIELOWIEYSKI**  
Vice-President, BISE Bank Council,  
MP

\* to April 10th 1992  
\*\* to April 29th 1992  
\*\*\* from April 29th 1992



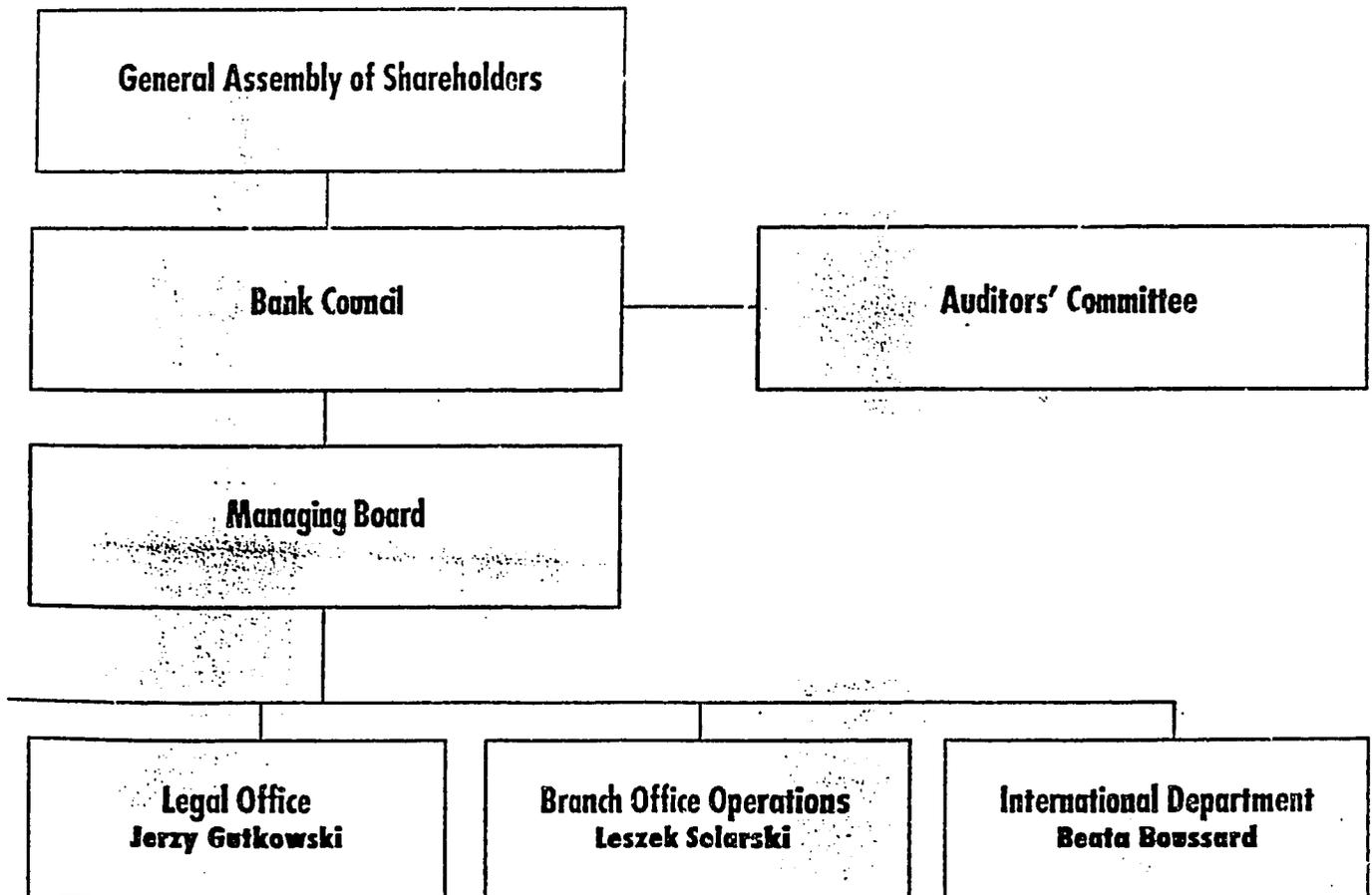
**Auditors' Committee**

**Małgorzata ARMATYS \*\*\***  
Banking Consultant  
**Jerzy POCZOBUT -- President**  
Warsaw University  
**Mirosław DUSZA**  
National Bank of Poland  
**Ryszard KOKOSZCZYŃSKI \*\***  
National Bank of Poland  
**Gertruda ŚWIDERSKA**  
Warsaw College of Commerce  
**Irena WIADERNA**  
Ministry of Labour and Social Policy

**The Managing Board members**

**Włodzimierz GRUDZIŃSKI**  
- President  
**Wojciech MAREK**  
- Vice-President  
**Lilianna MAŁYSKA**  
- Board Member  
**Krystyna FRĄTCZAK \***  
- Secretary General  
Advisor to the Board  
- Nathalie BOLGERT

**SCHEMAT OF ORGANISATION**



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## ORIGIN AND OBJECTIVES OF BISE

The Bank for Socio-Economic Initiatives was established in July, 1990 on the initiative of Jacek Kuron, the then Minister of Labour, in collaboration with the French bank Caisse Centrale de Crédit Coopératif. Prospective bank employees were trained from March to July in special courses financed by the Labour Fund and the Foundation France-Pologne. The first loan was granted by the Bank in August, 1990.

BISE was established with the idea of supporting the development of small and medium enterprises, particularly those which create new job opportunities. According to some West European estimates, a newly-established workplace involves the creation of another three workplaces. The Bank supports various economic initiatives, particularly at the local level, by granting investment loans, counselling on organizational and financial matters, and bringing together potential partners.

BISE, a joint stock company, was among the first Polish banks during the post-war period to have foreign shareholders. These are Caisse Centrale de Crédit

Coopératif and Foncier Participations, an affiliated company of the well-known French mortgage bank Crédit Foncier de France. The main Polish shareholders and promoters of BISE are: the Labour Fund, operated by the Ministry of Labour to combat unemployment, and the Industrial Development Agency, whose aim is to promote restructuring of the Polish economy. The original capitalization of BISE was 14.3 billion zł in July 1990.

After a restructuring, BISE's capital stock as of the end of 1991 amounted to 23.9 billion zł. As a result of equity contributions in December 1991 from three new shareholders: "Agora" Ltd. Co., editor of "Gazeta Wyborcza"; "Offer for Everyone" Ltd. Co. editor of "Prawo i Życie", "Życie Gospodarcze" and "Przyjaciółka"; and the Association of the Employees and Authors of "Życie Gospodarcze", this amount increased by an additional 1.2 billion zł. However, this last change is not reflected in the 1991 balance sheet, as the legal registration occurred after year-end. The Labour Fund remains the largest shareholder, with 64% of paid up shares.

BISE Shareholders	December 1991	
	votes	capital stock
Labour Fund*	52,16%	16 120 mln zł
Industrial Development Agency	30,90%	5 000 mln zł
Market Development and Trade Demonopolisation Fund**	12,36%	2 000 mln zł
Foncier Participations	2,97%	480 mln zł
Caisse Centrale de Crédit Coopératif	1,55%	250 mln zł
National Foundation for Environmental Protection	0,06%	10 mln zł
	100,00%	23 860 mln zł

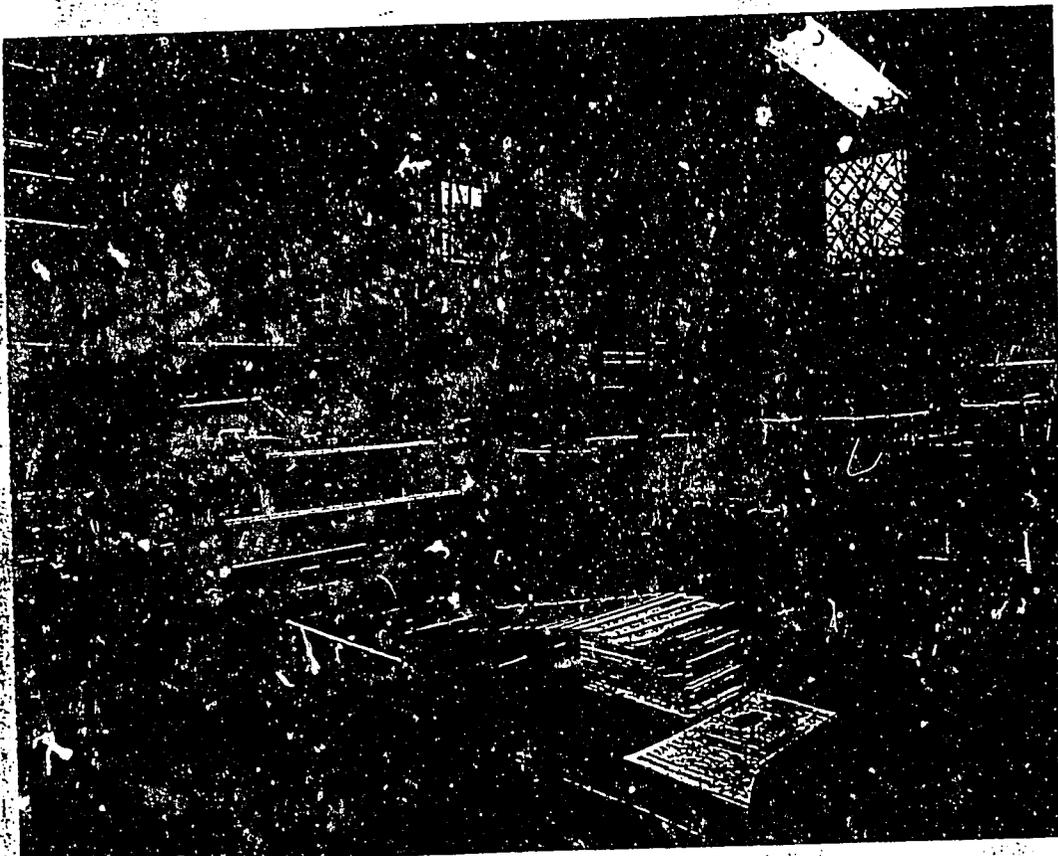
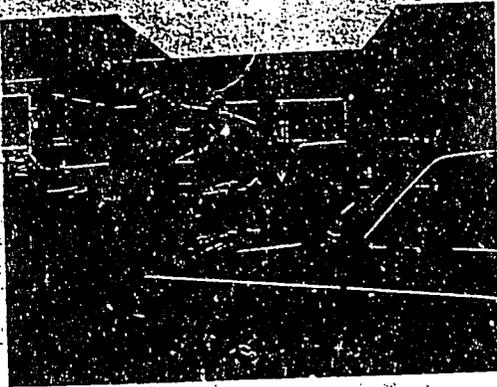
\* The State Treasury

\*\* Being currently liquidated

As the Bank for Socio-Economic Initiatives pursues the goal of supporting the development of small business sector, the loans granted by it are for economic activities only.

In 1991 BISE granted 333 loans totalling 83.5 billion zl. The average loan size was 250 million zl.; the maximum, 2 billion zl. The total number of loans granted by the Bank since July 1990 was 462, for a total amount of 55 billion zl. Investment loans constituted approximately 95% of this amount.

During the early stages of BISE's operations, the loan applications were primarily for developing commercial, i.e. retail and wholesale enterprises; however, in the second half of 1991 the majority of new applications were for new industrial



## CREDIT ACTIVITY

Loans granted (by sector)	1991	
	Number	Billion zł
Total	333	83 549
Production	117	46 790
Commerce	124	21 696
Services	88	12 453
Others	4	2 610

Loans granted (by type)	1991	
	Number	Billion zł
Total	333	83 549
Loan financing	319	75 689
Lease financing	14	7 860

manufacturing facilities. Although the number of commercial loans granted exceeded the number of industrial loans, the value of the latter in zloty terms was more than twice that of commercial loans (46 billion vs. 22 billion). Finally, BISE granted 88 loans to the service sector, with a total zloty value of 12 billion.

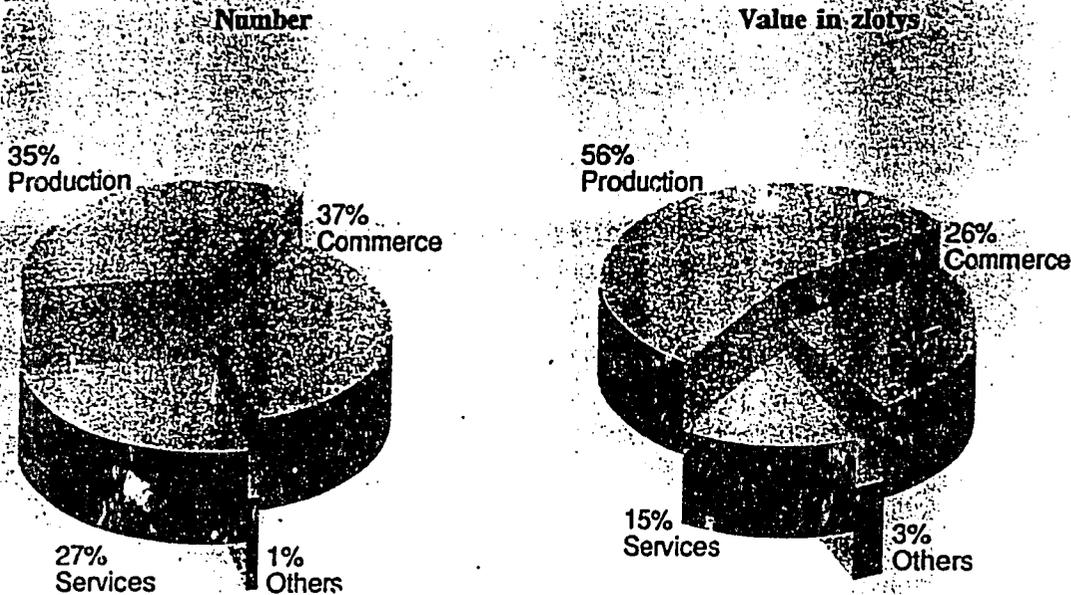
BISE was one of the first banks in Poland to engage in lease financing. Their value currently amounts to nearly 10% of loans granted. The majority of BISE's leasing contracts were for the purchase of printing machines, process lines for bread baking, and the manufacture of granulated products. Towards the end of 1991, BISE began reorganizing its leasing operations in the form of a separate affiliated company.

The clients of BISE are for the most part either new businessmen or people who

want to expand their already-operating family firms. They use the loans mainly to buy new machines or process lines. Typical examples of the firms relying on BISE for financial services are grocery stores, meat processing plants, and bakeries; drugstores; retailers of manufactured goods; and woodworking enterprises. In the service sector there are typically repair and construction workshops, printers, and small food-catering places such as pizzerias.

The Bank for Socio-Economic Initiatives acts in close cooperation with the foundation bearing a similar name: the Foundation for Socio-Economic Initiatives (FISE), which was set up simultaneously with the Bank. Through the network of its Agencies for Local Initiatives, the Foundation provides counselling to representatives of small firms. Agency employees, trained by BISE, provide all the informa-

## Structure of the loans granted in 1991



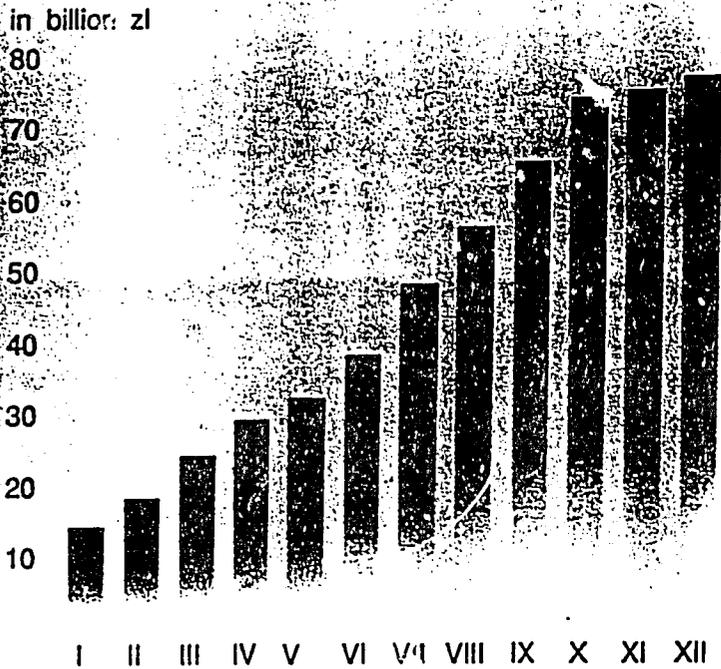
tion and assistance which the client may need, and accept credit applications. It is through the Agency that 40% of BISE clients come into contact with the Bank. Thus, although BISE does not have local branches, the scope of its activities encompasses the whole country, due to the cooperation with the Foundation.

The firms which profit from BISE loans operate in 41 of Poland's 49 voivodships. One third of the clients are located in the Warsaw voivodship; next come the voivodships of Gdańsk, Toruń, Koszalin, Radom and Łódź. The borrowers are mainly located in small towns and rural areas.

Thanks to the loans granted in 1991, 2000 new jobs were created, including 1100 in industry, 500 in trade and 400 in the service sector.

### Guarantee Fund

BISE is the first bank in Poland to create the Guarantee Fund, an institution based on mutual risk sharing. It allows for the granting of loans to clients who cannot always give sufficient collateral as provided by law. The fund is created from the Bank's own resources and a percentage deduction from already-granted loans. Should BISE incur a loss caused by the insolvency of any of the Fund members, each member would participate to cover the loss, in proportion to the share of their current percentage in the total amount of the Fund. A customer's financial resources allocated to the Fund, together with interest (equal to the current bank interest rate), will be paid out only after the customer's loan has been fully repaid.



Total outstanding loans, month by month - 1991

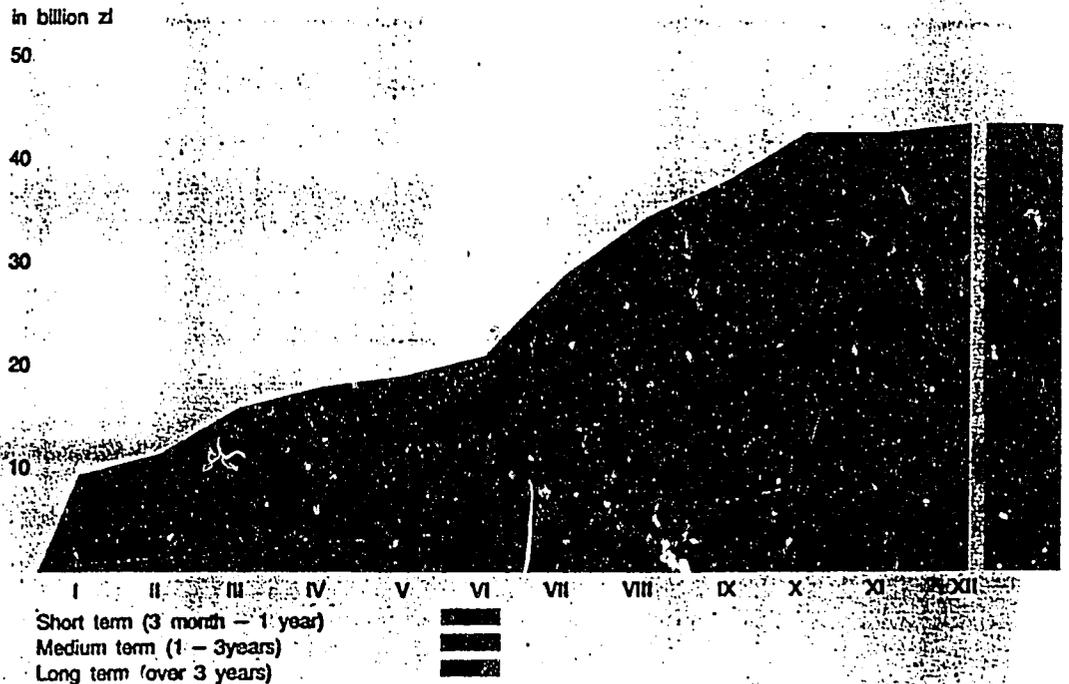
In 1991 BISE granted loans entirely from its own capital. In the second half of the fiscal year, the bank began negotiations with other banks regarding additional sources of funding.

**Credit line of Polski Bank Rozwoju S.A.**

On October 25, 1991, BISE signed an agreement with the Polski Bank Rozwoju S.A. (Polish Development Bank) on the granting of credits from funds at the disposal of PBR. The first loans will be offered to BISE clients at the beginning of 1992.

**Credit line of Credit National**

On November 18, BISE concluded an agreement with the National Bank of Poland on the granting of loans from the French-Polish Partnership Fund. The



Outstanding loans, month by month, by term

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credit line, opened as a result of the "Memorandum of Understanding" between the Polish and French governments, is designed to support the development of Polish-French joint ventures operating in Poland. The loans can be used to purchase (from France) products and services of French origin; to finance part of the working capital for Polish-French joint ventures; or to finance equity investments in such joint ventures by Polish or French individuals or companies.

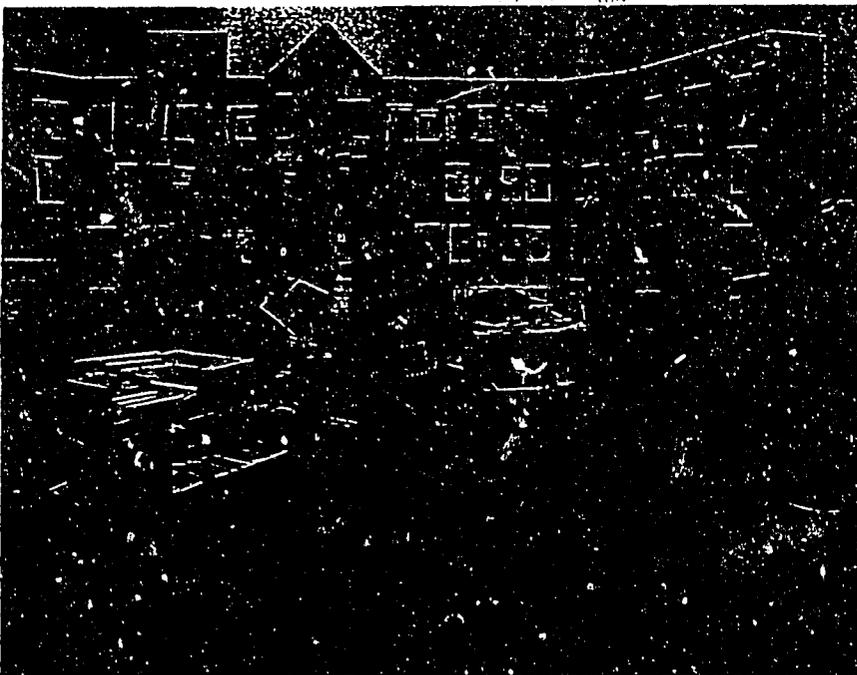


**B**ISE has actively participated in setting up regional development agencies in Wałbrzych voivodship, aimed at the restructuring of the economy in the region. In 1991 BISE became a shareholder of two Agencies:

**AGENCJA ROZWOJU REGIONALNEGO** (the Agency for Regional Development), a joint stock company with headquarters in Wałbrzych,

**AGENCJA ROZWOJU REGIONALNEGO "AGROREG"** (the Agency for Regional Development), a joint stock company with headquarters in Nowa Ruda.

Apart from BISE, the above two agencies' shareholders are as follows: the Industrial Development Agency; the communities in the territories where they operate; and the largest state enterprises with their seat in those communities.



**I**n 1991 the Bank established two joint venture companies.

The first of these, **PCLCERP Ltd. Co.**, was formed with the participation of **CERP Rouen (France)**. The company's activities range from the production and sale of pharmaceutical products to the construction and operation of drug stores.

The second company is the **TOWARZYSTWO INWESTYCJI SPOŁECZNO GOSPODARCZYCH** (Society for Socio-Economic Investments Ltd. Co.) (**TISE**). Its founders apart from BISE are **Société d'Investissement et de Développement International (France)** and the **Foundation for Socio-Economic Initiatives**.

The task of **TISE** is to provide assistance in creating small and medium sized enterprises and to secure their further growth by investment in their capital. **TISE** financial resources can be invested in economically sound enterprises which fulfill important needs in local communities. As soon as an enterprise is able to firmly stand on its own, which should not take longer than a few years, **TISE** will withdraw its support and sell its shares.

In the spring of 1991 BISE set up a holding company, **BISE PARTYCYPACJA**, in order to separate those activities which had no direct connection with banking services. The company will be instrumental in creating a network of companies constituting the "BISE group".

The goal of the company is to engage in all kinds of economic activity, especially: investment activity, financial operations, managing property rights and interests of other entities; representation, agency, consulting, marketing, promotion, and advertising services; organizing training; and trading in goods, services and property rights.

In 1991 BISE Partycypacja acquired shares in the following companies:

**NAJ INTERNATIONAL Ltd. Co.**, its scope of operation being as follows:

- a) staff management counselling;
- b) counselling on vocational orientation of employees;
- c) promotion of professional ethics in staff management.

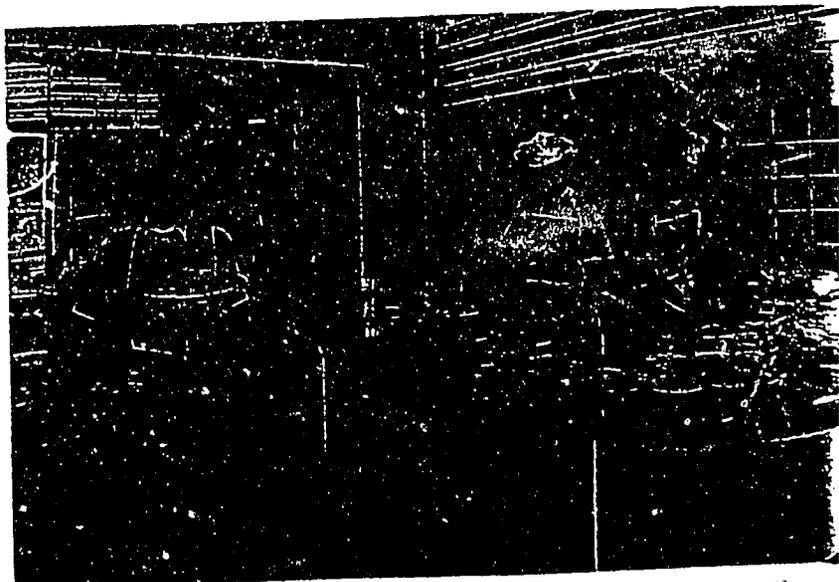
**FINLEX Ltd. Co.**, its activity being as follows:

- a) consulting services;
- b) economic and financial analyzes;
- c) investment and financing activities;
- d) information, promotion, advertisement;
- e) provision of office work and administrative services.

**EDITORIAL COMPANY COMPENDIUM Ltd. Co.** The company's activities comprise editing, printing and advertising as well as provision of legal training and advice.

Work on establishing **TOWARZYSTWO UBEZPIECZEŃ WZAJEMNYCH** (Mutual Insurance Association) was undertaken in 1991. Founders other than BISE are: FISE; Fundacja Pomoc Społeczna SOS (the Social Assistance Foundation SOS); Fundacja Akcji Demokratycznej (the Democratic Action Foundation); Fundacja Społeczna Solidarność (Social Foundation Solidarnosc); Euresa Holding (a European consortium of mutual and cooperative insurance associations); and several dozen cooperative banks.

The idea of mutual insurance consists of an association of members who pay their insurance premiums in the form of interest-free deposits. Membership shares do not bring any income and the budgetary surplus, if any, after deduction of indemnities payable to the members affected by the insured losses and covering of administrative expenses, is earmarked for the common self-help fund or for financing insurance premium reductions in the following year.



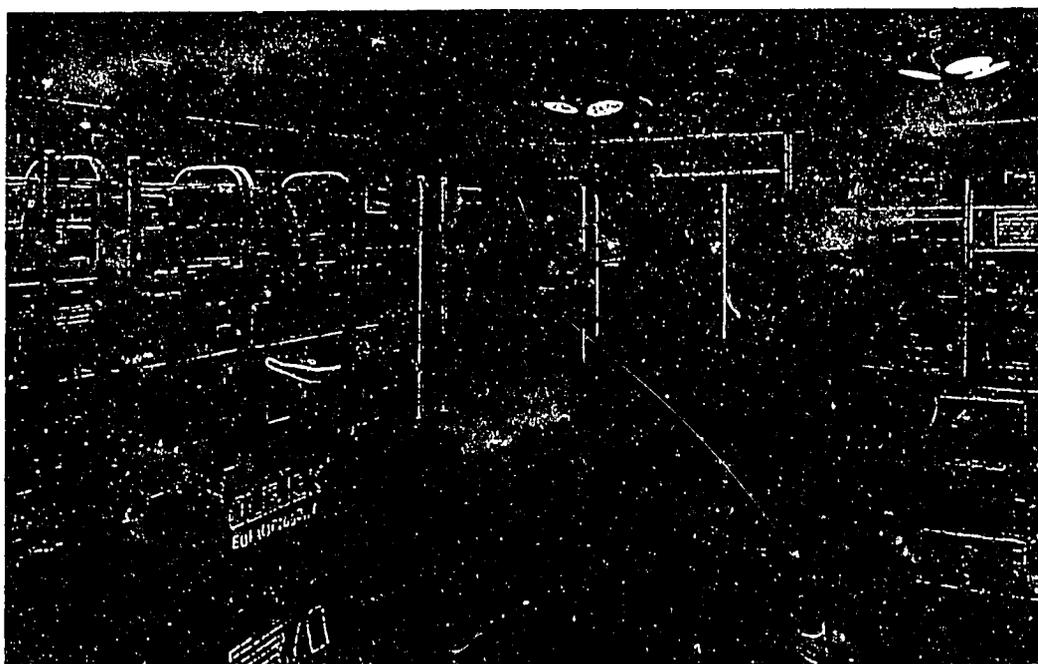
## SERVICES OFFERED

**B**ISE and its subsidiaries offer a wide range of services designed for foreign investors, including legal/economic expertise and preparation of documents necessary for the registration of new companies. Whenever there is interest, the Bank can also offer special services, e.g. legal opinions, property evaluation, etc. BISE has also worked for a number of joint venture companies and for representatives of well-known foreign corporations.

The bank organizes training courses for future financial analysts. A number of such 2-week courses have already taken place, notably for the employees of the Polish Development Bank, the Bank of Employee Ownership, the Industrial and

Commercial Bank of Kraków (Warsaw branch) and the National Business Service. One- or two-day training sessions have also been organized for employees of the Employment Offices (over 1000 people trained). Together with ANCE (a French agency for creating enterprises) BISE has also organized courses for young businessmen.

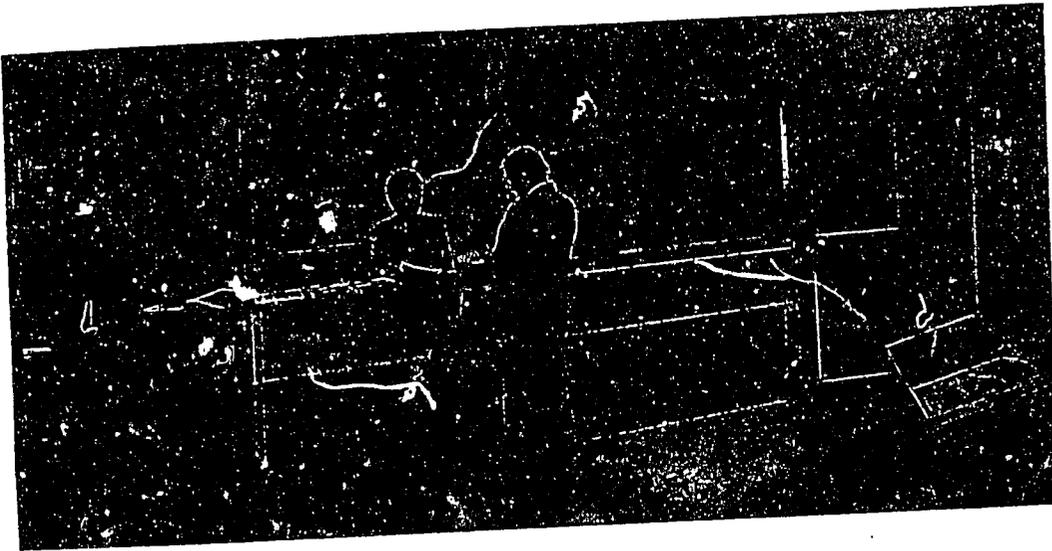
As a result of the close cooperation between BISE and French banks, BISE is visited by a number of foreign nationals, especially of French origin, interested in engaging in economic activity in Poland. At BISE they can find information, advice, and a general introduction to the Polish situation.



**Computerization**

The Bank has bought and put in place the banking information system "Bankier" and is implementing a comprehensive computerization of its operations. Computerization will also enable the implementation of a management control system, which will:

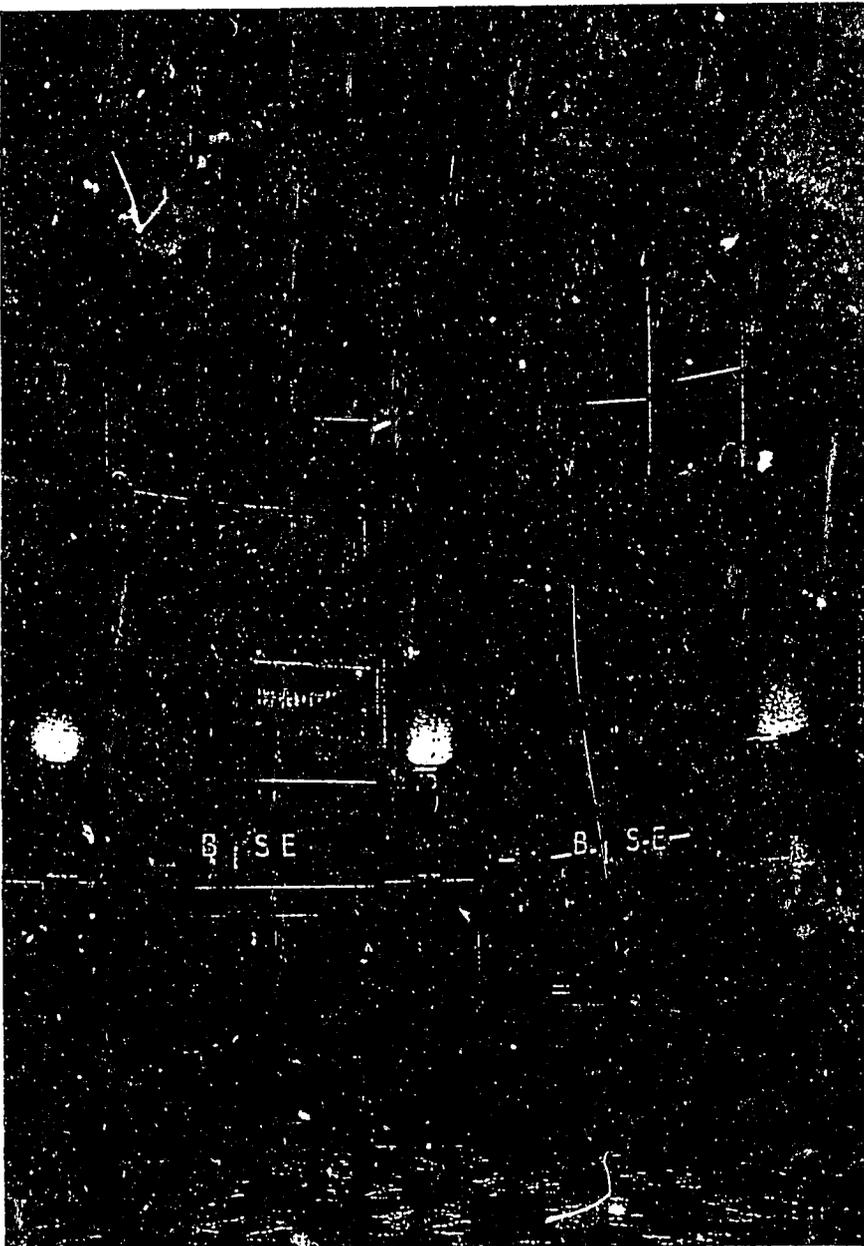
- prepare budget forecasts in advance and perform after-the-fact control;
- optimize the management of assets and liabilities by evaluating in real time the cash flows and risks.

**Employment**

As the Bank's operations have expanded, more and more specialists have been hired. At the beginning of 1991, 30 people were employed; later that year the figure rose to 60. The staff is composed primarily of young people, under 40 years of age. Nearly all of them are university graduates, mainly from Economic and Law Departments. Employees upgrade their qualifications at special courses, and also participate in specialist training given on-site at the bank. Several persons have been sent for training in foreign banks, mainly to Crédit Coopératif, Crédit Foncier de France, Crédit Commercial de France and Rabobank.

In the last quarter of 1991 BISE began to organize its Branch Office, in order to facilitate cash transactions and maintain both term and current accounts for its clients. Maintaining current accounts of borrowers will also be the means by which BISE, following the longstanding tradition of other banks, may have better control over the use and repayment of loans. The International Department is being expanded as well; until now it has mainly been working on the implementation of new banking products, in cooperation with BISE's foreign shareholders. The International Department will offer its clients comprehensive services including collecting and cashing cheques, foreign money transfers, and financing for imports and exports.

As the range of services offered by BISE has broadened, the Bank has begun to cooperate closely with non-profit organizations such as foundations and associations. BISE's cooperation generally takes the form of assistance in financial management.



*BISE Branch Office, 38 Senatorska St.*

The financial statements were audited by DRT Poland. The balance sheet and the income statement have been presented according to the New Chart of Accounts. A comparison of the results achieved by BISE in 1990 and 1991 is not useful, as the Bank's activities began in the second half of 1990.

Total assets at the end of December 1991 amounted to 122.4 billion zloty. The Bank had revenues of 47.7 billion zloty, primarily interest (93% or 44.5 billion). Of this, 26% was interest on loans; 57%, interest on term deposits and accounts with other banks; and 17%, Treasury bill interest. The remaining 7% of revenues consisted of leasing income, commissions, and fees derived by BISE from organizing training courses.

The proportion of revenues attributable to interest on loans was rather small. This stemmed from the fact that the Bank engaged in lending operations gradually, and offered some clients a grace period on repayment of interest.

Expenses amounted to 11.7 billion zloty. This included 36% for personnel costs and only 6% for interest expense. An additional 6% (included under "Other expenses") was used for staff training. The ratio of expenses to revenues was 25%.

Income before taxes amounted to 33.8 billion zloty.

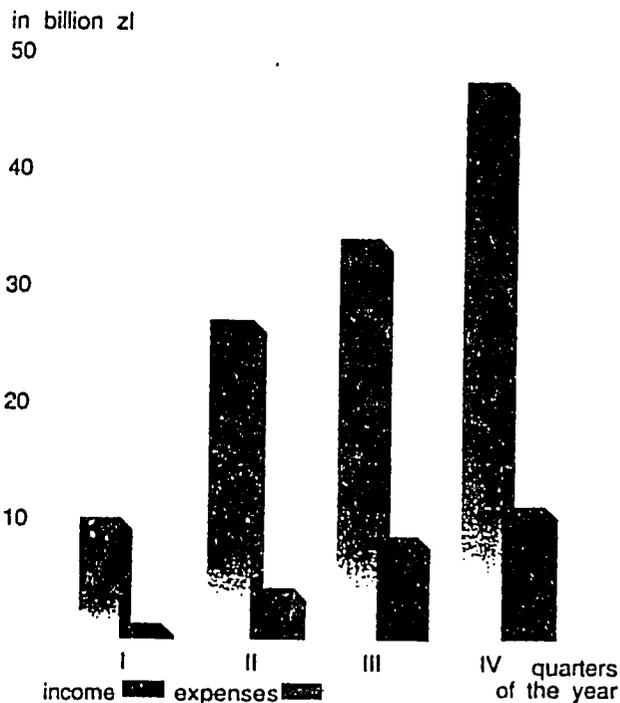
BISE's liquidity ratio, (a weighted average of equity to risk assets, calculated according to NBP's methodology and following the guidelines contained in the New Chart of Accounts), amounted to 60% on 31 December 1991. Such a high ratio results from the fact that in 1991 BISE did not offer current accounts nor

take deposits. The ratio is expected to fall next year when BISE's Branch Office opens and when the Bank begins to use the credit lines offered by other banks.

**Return on equity**, i.e., the ratio of income after taxes to the average book value of the Bank's own capital, amounted to 64%.

**Return on assets**, reflecting the relationship between income after taxes to the average value of the Bank's assets, equalled 21%.

**Profit per share** (net income divided by the weighted average number of shares) amounted to 4,803,459 zloty.



Income and Expenditure of the Bank in 1991  
(cumulative at the end of each quarter of the year)

## INCOME STATEMENT

	Note	1.1-31.12.1991 in mln. zł	28.7-31.12.1990 in mln. zł
Interest income	2	44,536	2,330
Interest expense		(665)	0
Net interest income		43,871	2,330
Commission income		800	99
Commission expense		(86)	0
Net commission income		714	99
Leasing income		2,044	0
<b>Profit from financial operations</b>		<b>46,629</b>	<b>2,429</b>
Other operating income		351	6
Employees' expenses		(4,216)	(612)
comprising:			
wages and salaries		(2,624)	(439)
payroll tax and social security		(1,577)	(173)
transfer to employees' funds		(15)	0
Other expenses		(6,266)	(991)
Total expenses		(10,482)	(1,603)
Depreciation		(466)	(24)
Income from operations		36,032	808
Extraordinary income		4	0
Extraordinary expenses	3	(2,074)	0
Net extraordinary expenses		(2,070)	0
Charitable donations		(180)	0
Income before taxes		33,782	808
Excess wage tax		(1,183)	0
Income tax	4	(11,214)	(323)
<b>Net income</b>		<b>21,385</b>	<b>485</b>
Allocation of net income:			
Dividend		14,362	0
Reserve for loan losses		2,500	0
Reserve capital		0	48
Guarantee fund		1,500	0
Investment fund		2,155	243
Employees' funds		868	146
Special fund		0	48
		21,385	485
<b>Earnings per share (in zł) *</b>		<b>4,803,459</b>	<b>170,056</b>

\* Net income divided by the weighted average number of shares

The notes form an integral part of these financial statements.

	Note	31.12.1991 in mln. zł	31.12.1990 in mln. zł
<b>ASSETS</b>			
Cash at bank and on hand	5	4,427	16,172
Treasury bills		12,450	5,765
Term deposits with other banks		8,500	50,000
Loans to customers	6	77,104	9,229
Participation rights in other companies	7	1,029	0
Shares in other companies	8	3,500	0
Intangible assets	9	172	220
Fixed assets	10	11,005	297
Other assets	11	4,258	42
<b>TOTAL ASSETS</b>		<b>122,445</b>	<b>81,725</b>

<b>LIABILITIES</b>			
Liabilities	12	8,108	329
Reserve for loan losses		1,371	0
Reserve for unpaid interest		347	0
Share capital	13	23,860	14,260
Share premium	13	14,260	14,260
Reserve capital	14	49,993	50,000
Guarantee fund	15	2,769	2,391
Investment and fixed assets funds		242	0
Employees' funds		62	0
Special fund		48	0
Net income		21,385	485
<b>TOTAL LIABILITIES</b>		<b>122,445</b>	<b>81,725</b>



Włodzimierz Grudziński (President of BISE)



Wojciech Marek (Vicepresident of BISE)

The notes form an integral part of these financial statements.

**STATEMENT OF SOURCE AND APPLICATION OF FUNDS**

	1.1-31.12.1991 in mln. zl	28.7-31.12.1990 in mln. zl
<b>SOURCE OF FUNDS:</b>		
<b>Internal sources:</b>		
Net income	21,385	485
Depreciation and amortisation	466	24
Loss on liquidation of fixed assets	92	0
Transfer to employees' funds	15	0
Interest recorded in guarantee fund	543	0
Amounts received from customers for guarantee fund	1,660	391
	<b>24,161</b>	<b>900</b>
<b>External sources:</b>		
Shares issued	9,600	28,520
Received from the Fund for Social and Economic Initiatives	0	2,000
Received from the Minister of Labour and Social Policy	0	50,000
	<b>9,600</b>	<b>80,520</b>
<b>Total sources</b>	<b>33,761</b>	<b>81,420</b>
<b>APPLICATION OF FUNDS:</b>		
<b>Investment activities:</b>		
Purchases of fixed assets	11,219	301
Purchase of intangible assets	0	240
Purchase of participation rights and shares in other companies	4,529	0
Net disbursements on employees' funds	99	0
Refunds to customers from guarantee fund	162	0
<b>Total applications</b>	<b>16,009</b>	<b>541</b>
<b>Increase in funds</b>	<b>17,752</b>	<b>80,879</b>
Increase in liabilities	(7,779)	(324)
Increase in loans to customers	67,875	9,224
(Decrease)/increase in cash and other monetary assets	(46,560)	71,934
Increase in other assets	4,216	44
<b>Total</b>	<b>17,752</b>	<b>80,879</b>

## 1) ACCOUNTING POLICIES

## a) Method of accounting

The financial statements have been prepared under the historical cost convention. Consolidated financial statements have not been prepared as the directors believe that such financial statements would not provide any additional meaningful information.

## b) Income recognition

Interest is recorded as income on a cash received basis. Interest due but not yet received is shown as deferred interest income and is recorded as income when the entire amount of the interest due is received. Commissions charged to customers are recorded as income at the time of effecting the transactions to which they relate. Bank and treasury bill interest is recorded as income on a cash received

basis. Income from leasing activities is recorded as income on a cash received basis.

## c) Guarantee fund

Accounting for the guarantee fund is carried out in accordance with the regulations of that fund.

## d) Fixed assets

Fixed assets are disclosed in the financial statements at historical cost less accumulated depreciation. Depreciation is charged to the income statement on a straight line basis, using the annual rates prescribed by the Minister of Finance. Fixed assets on lease to customers are accounted for as the Bank's own fixed assets and are depreciated in the same way as other fixed assets.

1.1-31.12.1991 28.7-31.12.1990  
in mln. zł in mln. zł

	1.1-31.12.1991	28.7-31.12.1990
	in mln. zł	in mln. zł
<b>2) INTEREST INCOME</b>		
Loan interest	11,579	101
Interest on term deposits with other banks	23,273	1,041
Treasury bill interest	7,806	0
Bank interest	1,878	1,188
	44,536	2,330
<b>3) EXTRAORDINARY EXPENSES</b>		
Fine for late payment of income tax	2,059	0
Other	15	0
	2,074	0
<b>4) INCOME TAX</b>		
Income before taxes	33,782	808
Less: treasury bill interest	(7,806)	0
Add: non tax-deductible expenses	2,059	0
Taxable income	28,035	808
Income tax (40%)	11,214	323

Due to conflicting interpretations by the Minister of Finance and NBF, a possibility exists that the Bank will have to pay income tax in the amount of 1,117 mln. zł on deferred interest income shown in Note 12.

## NOTES TO FINANCIAL STATEMENTS

	31.12.1991 in mln. zł	31.12.1990 in mln. zł
<b>5) CASH AT BANK AND ON HAND</b>		
Cash	20	5
Current accounts with NBP	10	3,389
Current accounts with other banks	4,397	12,778
	4,427	16,172

<b>6) LOANS TO CUSTOMERS</b>		
Loans to customers are repayable as follows:		
up to 3 months	569	0
over 3 months and up to 1 year	7,114	0
over 1 year and up to 5 years	69,421	9,229
	77,104	9,229

<b>7) PARTICIPATION RIGHTS IN OTHER COMPANIES</b>			
	(a)		
Polcerp Sp. z o.o. (b)	20.8%	125	0
Towarzystwo Inwestycji Społeczno-Ekonomicznych Sp. z o.o. (c)	50.3%	904	0
		1,029	0

(a) Percentage of the company's capital owned by the Bank at 31.12.1991.

(b) The range of the company's activities stem from the production and sale of pharmaceutical products to building and operating drug stores.

(c) The company started operations in 1992.

<b>8) SHARES IN OTHER COMPANIES</b>			
	(a)		
Agencja Rozwoju Regionalnego S.A.	4.9%	500	0
Agencja Rozwoju Regionalnego "AGROREG" S.A.	5.4%	500	0
BISE Partycypacja S.A. (b)	100.0%	2,500	0
		3,500	0

None of the above shares are listed on the Stock Exchange.

(a) Percentage of the company's share capital owned by the Bank at 31.12.1991.

(b) The company started operations in 1992.

<b>9) INTANGIBLE ASSETS</b>		
Notarial fees and stamp duties (net)	172	220

	31.12.1991 in mln. zł	31.12.1990 in mln. zł
<b>10) FIXED ASSETS</b>		
Net book value:		
Building held for investment purposes	4,005	0
Fixed assets on lease to customers	4,753	54
Other fixed assets	1,363	243
	<b>10,121</b>	<b>297</b>
Fixed assets under construction	884	0
	<b>11,005</b>	<b>297</b>
<b>11) OTHER ASSETS</b>		
Interest receivable	2,108	0
Other	2,150	42
	<b>4,258</b>	<b>42</b>
<b>12) LIABILITIES</b>		
Deferred interest income	2,793	0
Amounts due to the State Treasury	670	323
Amount due for the purchase of participation rights in other companies	904	0
Amount due for the purchase of shares in other companies	2,500	0
Other	1,241	6
	<b>8,108</b>	<b>329</b>
<b>13) CAPITAL</b>		
Share capital:		
At the beginning of the period	14,260	0
Shares issued	9,600	14,260
At the end of the period	<b>23,860</b>	<b>14,260</b>
Share premium:		
At the beginning of the period	14,260	0
Shares issued	0	14,260
At the end of the period	<b>14,260</b>	<b>14,260</b>
<b>14) RESERVE CAPITAL</b>		
At the beginning of the period	50,000	0
Received from the Minister of Labour and Social Policy (a)	0	50,000
Transfer to guarantee fund	(55)	0
Transfer from net income	48	0
At the end of the period	<b>49,993</b>	<b>50,000</b>

(a) In 1990, this amount was received from the Minister of Labour and Social Policy within the framework of the programme for the restructuring of industry. This amount is not repayable.

	31.12.1991 in mln. zł	31.12.1990 in mln. zł
<b>15) GUARANTEE FUND</b>		
At the beginning of the period	2,391	0
Received from the Fund for Social and Economic Initiatives	510	2,000
Amounts received from customers	1,660	391
Interest	543	0
Transfer from reserve capital	55	0
Refunds to customers	(162)	0
Reserve for loan losses	(1,371)	0
Reserve for unpaid interest	(347)	0
At the end of the period	2,769	2,391

*Auditors' Report to the Shareholders of the Bank  
for Socio-Economic Initiatives S.A.*

*We have audited the financial statements on pages 18 to 24 in accordance with International Auditing Guidelines.*

*We draw attention to the potential tax liability referred to in note 4 in the amount of 1,117 million zł.*

*Subject to any adjustment that might have been necessary if the outcome of the uncertainty referred to above had been known, in our opinion, the financial statements give a true and fair view of the Bank at 31 December 1991 and of the profit and source and application of funds for the year then ended in accordance with the accounting policies as set out in note 1 and the requirements laid down by the Securities Commission ("Komisja Papierów Wartościowych") dated 29 July 1991.*

*DRT Poland*

DRT Poland

Warsaw, 17 April 1992.