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A Guidebook to Divesting Social Assets

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DIVESTING SOCIAL ASSETS

EXECUTIVE SUMMARY

A. **Introduction:** Under the centrally planned economic system in Poland, state-owned enterprises were the organizers of various services of a social-vital, municipal and commercial nature which provided employees with a variety of benefits. These so-called "social assets" (aktywa socjalne) which provided these services and benefits, included housing, cultural and educational facilities, sport and recreational facilities, holiday resorts, children's camps, commercial businesses, food service facilities, health facilities and even police stations and jails.

In free market economies these assets are occasionally operated by companies or private individuals, the remainder are usually operated under local government control and are often financed from taxes. In Poland, social assets are often owned by state-owned enterprises, which cover all costs associated with maintenance of the asset and subsidize the activities provided by it. Under the centrally planned economic system the enterprise was given the responsibility to provide social asset services, thereby negating the need for a municipal infrastructure to develop, such as in market driven economies, to provide such social services. The enterprise became responsible for ensuring the provision of the vital living needs of workers and their families, and accepted as an honor the all-round development of these social-vital services and benefits, even competing among themselves in terms of number and quality of social assets.

As Poland's transition toward a market economy progresses, the government has become aware of potential barriers to privatization caused by social assets. These concerns have been expressed both by companies preparing for privatization and by potential investors. Investors are wary of unknown or unlimited future subsidy obligations not related to the operating business. How these subsidies impact on the profitability and cash flow of the company and the social asset must be understood so as not to impede the privatization process.

The goal of operating social assets was not to earn a profit. Therefore, there was no interest in separating the costs for maintaining the social assets from the general costs of enterprise activity. It was obvious that the assets were to organize and provide social services, so few enterprises tried to define the value of these services in relation to their costs.

As the financial priorities of state-owned enterprises change to reflect new economic priorities, including attracting capital, the three parties affected by the divestiture or privatization of social assets, enterprise, investor and government, must reflect on the suitability of state-owned enterprises continuing to provide and maintain such a wide range of services and the extent to which the expenses associated with these services have a direct affect on the profitability of the enterprise. Moreover, enterprises should determine the value of their social assets according to a value/subsidy relationship technique to decide

which assets to close, donate free of charge to another organized entity or sell.

In Polish tradition, and to some extent by regulation, social assets may be grouped into four categories based on the nature of services or activities they provide:

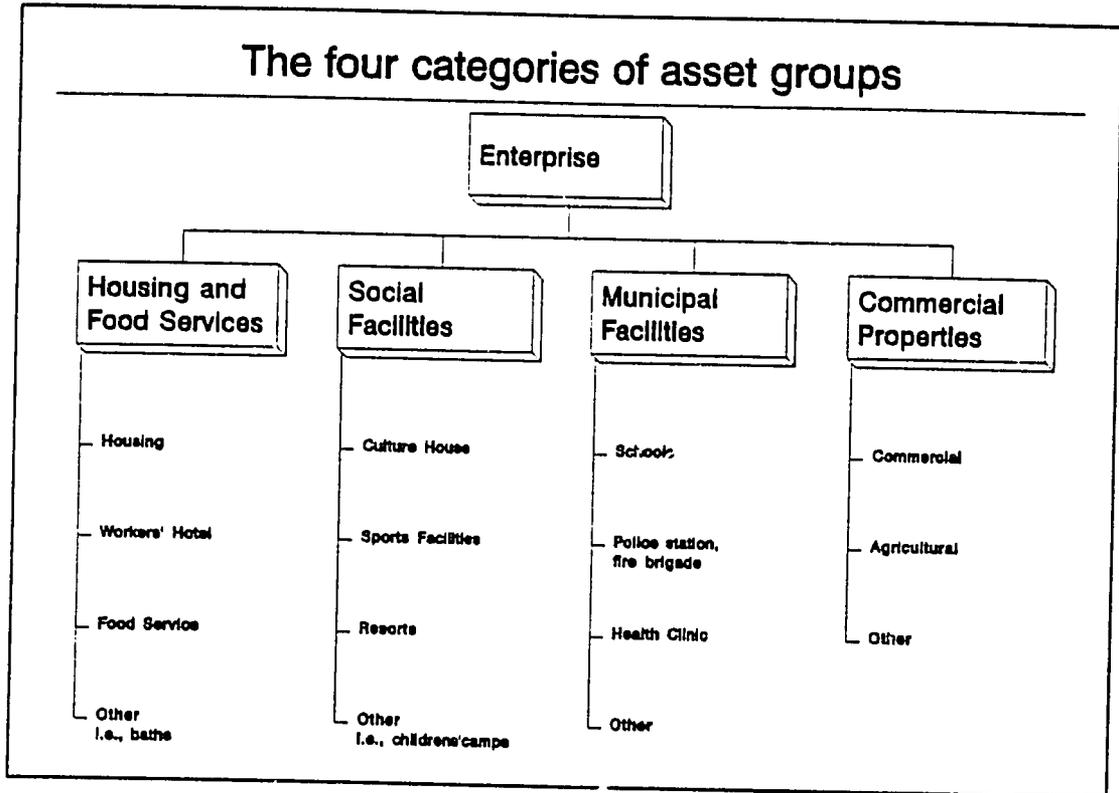
1. Assets providing housing and food services (aktywa bytowe, meaning assets of a vital nature): These are activities related to the shelter or nourishment of workers and their families. These assets include chiefly enterprise housing, workers' hotels, and cafeterias and buffets which provide nourishment on the premises of the enterprise.
2. Assets providing education and community services to enterprise employees (aktywa komunalne or municipal): These assets include schools (boarding schools, nursery schools, kindergartens, technical schools, etc.), health facilities on the enterprise premises, administration buildings, postal facilities, fire brigades, police stations, garbage collection equipment and municipal services, which in market economies are generally provided by the local government and funded through tax revenues.
3. Assets providing recreational social services (aktywa socialne or assets providing social activity): These are activities of a social, cultural, sport and other recreational character for enterprise employees and their families. In particular, these assets include: holiday resorts, children's camps, culture houses, sports and recreational facilities, and equipment for these assets and institutions,
4. Assets used in commercial activity (aktywa komercyjne): These are assets which do not directly relate to the business of the enterprise, but operate in the area of the enterprise, often for the benefit of employees, and which may be dependent on the enterprise or exist under separate ownership. Such assets include: stores, kiosks, services, including laundries, tailors, shoemakers, beauty and cosmetic salons, farms and a variety of other small businesses. In market economies this type of activity is profit-oriented and privately owned and operated.

Based on a 1992 review of 111 commercialized companies, the frequency of asset ownership in those companies was as follows:

Percent of Enterprises' Owning Asset Type

Share Capital ZBL	0-50	50-100	100-150	150-250	>250	Total
Housing	50%	67%	74%	91%	77%	67%
Culture & Sports	11%	19%	21%	46%	39%	23%
Municipal	17%	30%	21%	46%	50%	29%
Resorts	47%	59%	46%	55%	72%	53%
Other	28%	33%	21%	18%	61%	32%

The division of the social assets can be illustrated graphically, as shown below.

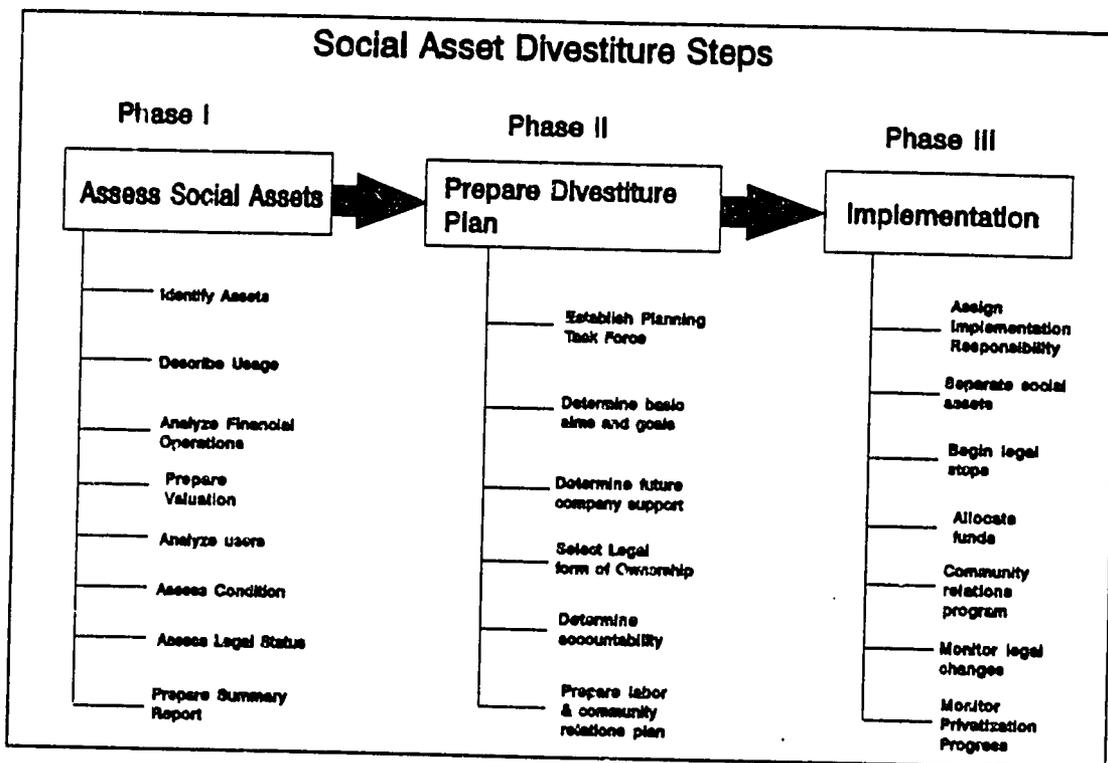


B. Purpose: This Guidebook has been prepared primarily for use by companies undergoing privatization and is intended to serve the needs of the following: (a) managers with overall responsibility for enterprise privatization or restructuring; (b) managers of the individual social assets who are responsible for carrying out day-to-day privatization or divestiture activities; (c) investors who are considering investing in a company or who have already invested and need to analyze and develop plans for their social assets; and (d) labor unions since the divesting of social assets has a direct affect on employees. Given the direct affect on employees, it is also recommended that management solicit union and employee participation when developing divestment options for each asset.

The Guidebook is intended to offer sufficient guidance so that companies and other users can assess their social assets and develop preliminary plans to divest or manage those assets, without the assistance of expert consultants. However, it is recommended that certain steps, such as legal reviews, valuation of assets or public relation campaigns be conducted with expert assistance. In cases where such advice is strongly recommended, it is stated in the text.

C. Overview of Process:

The Guidebook presents a process consisting of three phases which represent the step-by-step activities an enterprise should undertake to analyze social assets, determine who uses them, and prepare and implement disposition plans. The chart below provides an overview of the steps in each phase.



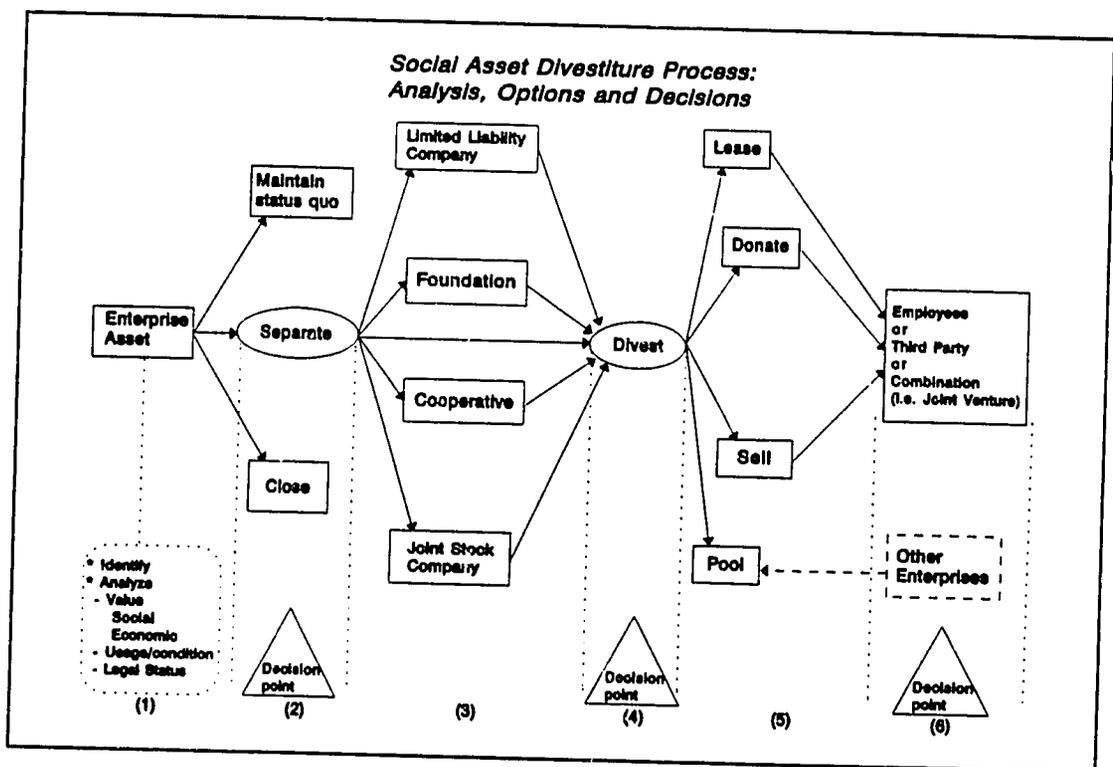
Phase I. Assess the Company's Assets: In order to determine and achieve operating goals, accurate revenue and expense data, legal status, physical condition, and user information about each social asset is needed. This phase explains how to assemble and analyze such data.

Phase II. Prepare the Divestiture Plan: Once a company knows the operating cost and the relative importance of each asset, it should use that information to decide on a plan of action. An essential part of the plan is for the managers of the social assets to take responsibility for their operations, whether the company continues to own them or not. Goals determined by asset managers should be based on revenue projections and operating budgets. If those goals are not achieved, managers must be held accountable. This phase explains the steps involved in developing a divestiture plan.

Phase III. Implement the Plan: The final step is to carry out the plan according to a defined schedule. This phase contains a brief description of implementation steps.

D. Implementing Divestment:

Once a company has analyzed its social assets, it must decide on a divestment and ownership strategy. There are numerous options available to a company for the ultimate ownership form and divestment strategies. The chart below presents those possibilities and highlights at which stages important decisions must be made. Following the chart from left to right: 1) the enterprise analyzes its assets; 2) it makes a decision to maintain, close or separate the asset; 3) if separation is decided, there are four legal entities available to separate the asset into; 4) the enterprise must decide whether or not to divest the asset; 5) if divestment is decided, there are four divestiture options available; 6) finally, a decision must be made as to who will participate in the chosen divestiture option.



The Guidebook discusses in detail procedures for separation and ownership options, as well as advantages and disadvantages of each option. Given the overall objective is the divestment of social assets, the ultimate solution in many cases may be seemingly apparent. For example:

- o Housing can be sold to tenants either individually or in cooperative form;
- o Schools should be transferred to the municipality or Ministry of Education as the most appropriate bodies to set education standards and operate

- o Sports clubs could be transferred to athletic associations or municipalities, since the community may gain the most benefit from these facilities;
- o Culture Houses could be transferred to foundations, as a non-profit organization, or municipalities which may desire to provide cultural activities to the community;
- o Resorts may be leased to management companies or resort employees and privately operated for a profit, with special rates for enterprise employees.

However, when striving to achieve these objectives, it becomes readily apparent that there are numerous and seemingly insurmountable obstacles to divestment. These include tax and legal obstacles, financial and economic obstacles and cultural obstacles. Overcoming these obstacles may require changing current legislation, rates rising to market level, increasing incomes and other events which may take years to accomplish. Many of these issues are discussed in the appendices of this Guidebook.

In virtually every case, the immediate step is to separate the asset from the operating company. Separation will encourage both accountability and defining asset subsidies. The assets will be recognized as investments rather than commingled with other assets, thereby helping investors or management better analyze the costs and benefits associated with the asset. In order to separate the assets, it will be necessary to undertake a preparatory process of analyzing revenues and costs required to operate the asset, separating subsidies out of the operations of the business and settling legal issues. Initiating the separation process will allow enterprise management to better understand the costs associated with the asset, improve the management of the asset, understand divestment options and prepare a divestment plan.

In many cases the preferred method is to create a limited liability company ("LLC") and exchange the assets of the facilities for shares in the LLC. Once separated, the ultimate goal, privatization, can be more quickly achieved when the appropriate time arrives. Other options may be more appropriate and these are discussed in greater detail in Phase II and Appendices 6-9.

E. Appendices:

The steps discussed throughout the Guidebook are intended to be general and apply to any social asset. Where greater detail is warranted, it is included in an appendix along with detailed illustrations.

Appendix 1 contains a detailed work plan to undertake all steps in the Guidebook. It lists step-by-step tasks and provides an estimate of the number of days in which people assigned to the project could be expected to accomplish each task.

Appendix 2 discusses how to prepare a current financial analysis and future financial operating projections for each asset.

Appendix 3 discusses the importance of: understanding and quantifying user attitudes toward the social assets; including employee and community representatives in the decision making process for asset divestment; and communicating asset disposition plans to the users.

Appendix 4 discusses capital expenditures which may be necessary to maintain or improve the facility or its operations

Appendix 5 discusses how to manage employee benefits as a cost item rather than as an asset.

Appendix 6 contains an overview of the various legal forms of ownership that a company may wish to use.

Appendix 7 discusses various options that could facilitate selling social assets or make the sale more attractive to investors.

Appendix 8 discusses various methods to help determine an appropriate operating structure for an asset.

Appendix 9 contains a discussion of the legal steps necessary to separate social assets from the enterprise.

Appendix 10 contains sample documents to assist the enterprise when preparing such documents.

Appendix 11 provides a general overview of the various tax implications associated with separating, transferring and selling social assets.

Appendix 12 provides a general overview of the housing laws in Poland to help companies understand their obligations and the obligations under various forms of ownership for housing.

Appendix 13 provides a list of all relevant laws that could effect social asset divestment strategies or plans.

Appendix 14 is a brief discussion of some new government proposals with respect to housing which examine various ideas to facilitate its privatization.

PHASE I. ASSESSING THE SOCIAL ASSETS AND THE USERS

Before deciding on the disposition of the social assets and developing a plan to achieve those disposition goals, it is necessary to determine what the assets are, understand what resources those asset use, and the importance of the assets to the company, employees, community and other users. Divestiture of social assets, from the viewpoint of the company, is primarily an issue of benefits versus costs and is the primary subject of this Guidebook. It is a social issue from the point of view of the workers. Therefore company management must remain sensitive to the affect divestiture (or closure) may have on the benefits employees gain or perceive to gain from the asset. Because of the importance social assets may have to employees, workers should be included in the decision making process.

When beginning the process of deciding on the future of social assets, the first step is to assess the social assets. The tasks recommended for this phase of activity are as follows:

- A. Identify the social assets,
- B. Describe the usage of each social asset,
- C. Analyze financial operations for each social asset,
- D. Prepare a valuation of each asset expected to be divested from the company,
- E. Analyze the users of each social asset,
- F. Assess the physical condition of each social asset,
- G. Review the legal status of each social asset,
- H. Summarize the analysis and prepare a management report.

Each task is explained in the text that follows. In addition, examples are included to help understand each task and assist the company in compiling and preparing the information. Finally, where greater detail is warranted, an appendix is included. An example of an overall work plan for the Phase I analysis is included as Appendix I.

A. Inventory the Social Assets

1. Key Considerations: It is essential to develop a view of the company's overall business goals, problems and plans. Within an overall business plan, identify the activities and physical assets (buildings and equipment) which do not contribute directly to the company's primary business(es). Some may be unrelated business enterprises such as shops; others may be social assets which may be important to the company's employees, pensioners, or the larger community.

2. Suggested Tasks:

a. Prepare a list of all of the company's activities. In addition to the company's primary business, it may perform some or all of the following activities:

- i. Assets providing housing and food services (aktywa bytowe, meaning assets

of a vital nature): These are activities related to the shelter or nourishment of workers and their families. These assets include chiefly enterprise housing, workers' hotels, and cafeterias and buffets which provide nourishment on the premises of the enterprise. These assets, especially housing typically require large subsidies from the company.

- ii. Assets providing education and community services to enterprise employees (aktywa komunalne or municipal): These assets include schools (boarding schools, nursery schools, kindergartens, technical schools, etc.), health facilities on the enterprise premises, administration buildings, postal facilities, fire brigades, police stations, garbage collection equipment and municipal services, which in the free market are generally provided by the gmina, and funded through tax revenues.

Divestment of these assets should take into consideration whether the Gmina should own and operate them, or whether they should be privatized. The Guidebook takes the general view that municipal facilities should be transferred to the Gmina. Consequently, there will be no further discussion of them. However, the analysis described herein is equally applicable to these facilities.

- iii. Assets providing recreational social services (aktywa socjalne or assets providing social activity): These are activities of a social, cultural, sport and other recreational character for enterprise employees and their families. In particular, these assets include: holiday resorts, children's camps, culture houses, sports and recreational facilities, and equipment for these assets and institutions. These assets often require large subsidies from the company.
- iv. Assets used in commercial activity (aktywa komercyjne): These are assets which do not directly relate to the enterprise, but operate in the area of the enterprise, often for the benefit of employees, and which may be dependent on the enterprise or exist under separate ownership. Such assets include: stores, kiosks, services, including laundries, tailors, shoemakers, beauty and cosmetic salons, farms and a variety of other small businesses. In market economies this type of activity is profit-oriented and privately owned and operated.

This Guidebook takes the general view that the company should define its strategy with respect to these properties and either sell or lease those that do not fall into that strategy. The analysis described herein is equally applicable to commercial properties.

- b. Identify the buildings and equipment used in each activity and prepare an inventory of each. The purpose of the inventory is to prepare a preliminary assessment to assist management in identifying exactly what assets are in each facility and identifying the resources required by those assets.

EXHIBIT I-A

SOCIAL ASSET INVENTORY

#	ASSET Address	Year Built	Size (sq m)	Description	Total leases if applicable	Employee Leases	Non-emp Leases	Total Residents or lease emplys	# Asset Employees	Book Value (zł mln)
1.	Apartment bldg. 1	1953	1,600	12 apts	12	8	4	43		
2.	Apartment bldg. 2	1966	4,000	65 apts	50	35	15	244		
	⋮									
37.	Apartment bldg 37	1983	2,500	50 apts	48	40	8			
	Total housing		74,565	1,657 apts	1,650	1,024	626	6,188	12	
48.	Culture House	1978	3,750	1 theater					5	
				4 classrooms					6	
				billard room	leased		1	2 employees		
				1 cafe	leased		1	8 employees		
	Total Culture house		3,750		2			10	11	
49.	Sports facilities:									
a.	Stadium	1964		15,000 seats					8	
b.	Swimming pool	1977		50mx25m					4	
c.	Gymnasium	1958		3,000 seats					4	
d.	Sports house	1974	1,300						5	
	Total Sports								21	
50.	Resorts:									
a.	Zakopane	1956		25 rooms	leased			20 employees		
b.	Sopot	1948		18 rooms					16	
	Total Resorts			43 rooms	1 leased			20	16	

c. Select the social assets and other ancillary facilities which require further detailed analysis. In order to decide which facilities will receive a detailed analysis, the assets must be prioritized on some basis. For example, preliminary prioritization could be based on size of the asset base (b. above) or some management determined priorities.

d. Make one person responsible for the analysis of social assets and ancillary facilities, give them a time schedule and sufficient resources to make the analysis. As discussed below, it is imperative that one person has ultimate responsibility for instituting the separation and divestiture plans of all social assets. However, in order for this person to be successful, clear priorities must be developed by management along with a realistic time frame in which to achieve the objectives.

3. Suggested Approach and Sources of Information: At this stage of identifying the assets to be studied, discussions should involve only high level managers and the person designated to do the study. The work product of this stage is an inventory listing assets and ancillary facilities and how they are used; a definition of which assets are social and, among them which are likely to have high interest among users as to their future status. Exhibit I-A, is an example of how information about each asset can be compiled into a social asset inventory.

EXHIBIT I-B

ASSET USAGE TABLE

CULTURE HOUSE Event/facility		# of events or days open per year	Average Users per event			Yearly Budget (zł millions)	Ticket price or usage fee	Other Comments
			Emp.	Non-emp	Total			
1.	Theatrical performance	12	150	100	250	25	15,000	Leased to independent operator for 450,000/month Leased for 15 million/month and 5% of revenues
2.	Outside performances	6	100	100	200	25	50,000	
3.	Films	52	50	30	80	10	10,000	
4.	Language courses	4	5	4	9			
5.	Computer courses	4	5	5	10			
6.	Billards	300	50	75	125		30,000	
7.	Cafe	300	200	200	400	75		
23.	Wedding receptions	50	n/a	n/a	0	500,000	2,000,000	Charge 500000 per night to rent reception room
24.	Reception catering	45	50	50	100	4,000,000	6,000,000	Catering for parties & weddings
TOTAL		1,500	5,634	3,326	8,960	200	n.a	

B. Describe the Usage of Each Social Asset

1. Key Considerations: The company and its potential investors need to know the importance of social assets relative to the company's overall business activities. This includes knowing the number and size of the assets, the number of staff they employ, the programs and services they offer, and the number of users served. This task expands on the initial identification of assets prepared for management review.

2. Suggested Tasks:

a. Interview the manager of each social asset. The purpose of the interview is to understand what the manager perceives his responsibilities to be (these may be different from what company management perceives), the responsibilities of his staff, what he perceives the problems and strengths of the facility are, and its future prospects.

b. Using those interviews and information which may be available elsewhere in the company, prepare a schedule in a format such as that show in Exhibit I-B.

c. Decide on the order in which the social assets will be analyzed.

3. Suggested Approach and Sources of Information: This is still at a general level of review. Information obtained in interviews and discussions with the social asset managers is very important. However, the social assets should be visited independently so that their physical characteristics are directly understood by those coordinating the review. The asset manager is a valuable source of information, however, his comments should be verified independently by others with similar information available to them.

EXHIBIT I-C

**Summary Operating Statement
(in Zml)**

	Total Company Operations	Culture House	Housing	Sports Facility	Total Social Assets
Revenues	2,133,000	571	2,520	4,000	7,091
Expenses	1,678,000	2,100	4,139	9,000	15,239
Profit (Deficit)	455,000	(1,529)	(1,619)	(5,000)	(8,148)
% of Company expenses		0.1%	0.2%	0.5%	0.9%
% of Company profit		(0.3%)	(0.4%)	(1.1%)	(1.8%)

**Summary Projections
(in Zlm)**

SPORTS FACILITIES

	<u>Yr. 1</u>	<u>Yr. 2</u>	<u>Yr. 3</u>	<u>Yr. 4</u>	<u>Yr. 5</u>
Revenue	4,373	4,373	4,373	4,373	4,373
Expenses	10,653	7,396	7,354	7,337	7,337
Deficit	(6,280)	(3,023)	(2,981)	(2,964)	(2,964)

C. Analyze Financial Operations for Each Social Asset

1. **Key Considerations:** Social asset costs and revenues are often included, without clear delineation, within the operating records of companies. It is important to analyze the overall costs of operating and maintaining the social assets, particularly to estimate how large the subsidies are which the company may be providing. The company will ultimately need to assess the benefits these facilities provide to its employees. While assessing employee benefits is discussed in Appendix 5, the first step is to establish the revenues, expenses and subsidies of each social asset. It is also valuable to forecast future results for several years to assure that all possible changes and developments which will influence costs have been considered. Both the analysis and the forecasts will help in quantifying future benefits and in assessing the financial impact on the company of continuing or discontinuing certain assets. Appendix 2 contains detailed discussion of preparing operating statements and forecasts.

2. Suggested Tasks:

a. Prepare an estimated operating statement for a full year separating each social asset based on recent levels of activity and staffing. The schedule should list each revenue category and its amount followed by each expense category and its amount. A sample operating statement for a culture house is included in Appendix 2.

b. Prepare a financial projection of operations. While the operating statement described in a. above shows the current income and expense of the asset, the projection shows future operations. It should show each year of operation of the facility for the next five years. Any anticipated changes, such as increases or reductions in staff, repairs to the building, or purchase of new equipment should be included in the appropriate year. A sample financial projection for housing is also included in Appendix 2 along with a sample staffing plan that will help in preparing the projections.

3. **Suggested Approach and Sources of Information:** The operating statement will require information from the company's accounting records. Make a list of the types of cost that each social asset incurs (e.g. payroll, heating, repairs, supplies, etc.) Work with a senior accountant in the company to estimate annual amounts for each type of cost. Also, prepare estimates of the revenues of each social asset, such as rents for housing, user fees and admissions to events. A separate schedule of costs and revenues is needed for each social asset.

Exhibit I-C is an example of a summary operating statement for a company with a culture house, sports facility and housing. The example shows the revenues and expenses for each asset as well as the company as a whole. It also shows how a summary five year projection for the sports facility might look.

D. Prepare a Valuation for Each Asset Expected to be Divested from the Company

1. Key Considerations: After financial summaries have been prepared for each social asset, it may be necessary to value the asset. In order to decide whether a valuation is needed or not, the company must determine whether it intends to keep the asset within the operating company or separate it from the company. As discussed in Phase II of the Guidebook, it is recommended that the company separate all of its social assets from the operating company, whether it intends to eventually sell those assets or not. In order to separate those assets, it may be legally required to determine the value of each asset to be separated.

2. Suggested Tasks:

a. Determine if a valuation is necessary. If the company separates and contributes the asset to a new legal entity, it must hire an independent valuation expert acceptable to the court who will approve the entity. If the asset is sold to a third party, the Founding Ministry has the right to reject that valuation and have another one performed.

b. Valuation methods. The valuation must be done in accordance with one of the following methods:

- i. Net Book Value - This is the simplest approach to valuation. The value assigned to the asset is the value which is carried on the company's balance sheet, including any revaluations required by law. A drawback to this approach is that it recognizes the historical cost of an asset, not its market value, replacement value or value as a source of income.
- ii. Market Approach - The market approach estimates the value of a building based on comparable sales. In Poland, since markets are relatively new, data on sales of comparable property may be limited.
- iii. Replacement Cost Approach - The replacement cost approach is based on the principle of substitution, meaning that a discerning purchaser would not pay more for the property than the cost at which he could acquire a similar piece of land and construct a similar structure. The technique separates the value of the property into its component parts of land and improvements. The premise of the replacement cost approach is that a property's inherent market value should be similar to the cost incurred to place similar improvements on that or similar property.

The first step in valuing a property at replacement cost is to estimate the market value of the land (or value of perpetual usufruct), as if vacant and available to be developed to its highest and best use. The second step is to estimate the value of the improvements by calculating the reproduction costs of all improvement less accumulated depreciation. The cost estimates of improvements are then added to the land value to obtain the market value estimate.

EXHIBIT I-D

**Summary Valuation
(in Zml)**

	Housing (per unit)	Culture House	Sports Facilities	Resorts
Book Value	20	850	1,200	3,000
Market Value	50	1,500	1,300	6,000
Replacement Value	75	2,000	2,900	4,700
Discounted Cash Flow	(8.5)	(3,011)	(8,014)	(2,224)

One drawback to the replacement cost approach is that potential local investors (especially residents of enterprise-owned housing) may lack the financial resources to pay for the asset at replacement cost. In other words, they do not have the money to purchase on the basis of replacement cost even when depreciation is taken into account.

- iv. Discounted Cash Flow: Under the DCF method, the net cash flow (sources of cash less uses of cash) generated by the asset is estimated (often over a five to seven year period). Those cash flows are then discounted back to the present to provide current value of the asset (net present value). In some instances, as may be the case with social assets, the net present value of the asset may be negative, since expenses are greater than revenues and cash used greater than cash received. An investor interested in the operating company would consider this value the amount of subsidy necessary to keep the asset in operation. In terms of the company privatization, one option, would be to set aside that amount of money to help fund the asset in the transition period from enterprise-owned to divested entity. At the end of the transition period, asset management would be wholly responsible for operating and funding the asset. For example, in the case of housing, at the end of the transition period it would be necessary for rents to have risen to cover costs, or for other housing subsidy/assistance programs to be in place to cover the operating deficit.

3. Suggested Approach and Sources of Information: The company must retain an independent expert to perform the valuation if the asset is to be sold or is treated as a contribution to a new legal entity. An independent expert will also retain impartiality in the valuation, which will be helpful in the case of the sale of housing, to ensure residents that they are being offered a fair value or fair discount from market value. In addition, because valuation is a highly technical procedure an expert in valuations should be relied on to perform the valuation properly. A summary valuation statement is presented in Exhibit I-D.

EXHIBIT I-B

USERS OF SOCIAL ASSETS

RESORTS

Name	Capacity: # of Beds Per Night	Avg. # of Beds Used Per Night	Utilization Rate	% of All Employees Who Use the Resort	% of All Users Who Are Employees	Average Length of Stay		Cost\Employee\day 30% employee paid 70% company paid	Additional Comments (Based on qualitative and quantitative survey data)
						Employee	Non - emp.		
Resort 1	80	36	45%	28%	40%	14 days	3 days	79,760	<p>The most important consideration for resort users is continued company - subsidized vacations. Using the vacation at a resort of the user's choice is the second most important consideration. Of less importance is being able to spend subsidized vacations at a company owned resort.</p> <p><i>Note: The company should take these attitudes into consideration when deciding on the future relationship between company and resort</i></p>
Resort 2	59	22	37.3%	32%	5%	14 days	5 days	81,242	
Resort 3	272	121	44.5%	53%	40%	14 days	4 days	9,240	

HOUSING

Location	Capacity: # of Units	Occupancy	Utilization Rate	% of All Employees Living in Company- owned Housing	% of All Tenants Who Are Company Employees	% of All Tenants Who are Pensioners of the Company	Rent Per Month	Additional Comments (Based on qualitative and quantitative survey data)
On-site	1,062	1,062	100%	42%	50%	20%	2,640 z per square meter	<p>Many respondents did not understand the company's offer.</p> <p>91% of respondents are not interested in buying their apartment for cash.</p>
City	995	995	100%	40%	45%	23%	2,640 z per square meter	<p>53% are not interested in buying in installments, 32% are interested in the installment plan, 15% have no opinion.</p> <p>Installment offer rejected due to: high price, inability to pay future installments, increasing interest rate or installment.</p> <p><i>Note: Such information suggests the Company should spend time explaining its offer and marketing the advantages of homeownership.</i></p>

Total # of units: 2057

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E. Analyze Users of Social Assets

1. Key Considerations: Users of social assets may include both company employees and members of the community. In the past, social assets often were a source of pride for the company and community. However, as a privatized company, care must be exercised in providing social asset services that are not used exclusively or primarily by employees. It will be difficult to justify to shareholders, investors and providers of capital, expenditures for social assets where the primary beneficiary are non-employees, unless those users are paying for the full costs associated with their use.

In addition to cost considerations, the fate of a social asset will also depend on its importance to users. For instance, some assets are vital and must remain available, whether company supported or otherwise. Housing and medical facilities are an example. In such cases, continued company subsidies may be easy to justify to shareholders. Other assets, such as sports facilities, may be important to the community and should be transferred there, though possibly over some transitional period. While some facilities may be popular they may not be necessary. For example holiday resorts; employees may value them highly, but would rather be free to spend their leisure time as they choose than at a company provided resort. In this example, the fate of the unpopular resort may be easily decided. Finally, some assets may have low importance or provide low benefit to user groups. These assets might be easy to close down with little concern of user resentment from losing the asset.

2. Suggested Tasks:

a. For each social asset, identify comparable assets in the community, including whether they are more or less attractive and functional than the company's asset and whether they are a potential source of competition with the company's asset.

b. Identify the types of users for each social asset, e.g. workers, pensioners, families of workers, others, and review the level of asset importance to those users.

c. Survey the users of the social assets. The survey should include frequency of use, fees paid, concerns and attitudes about the assets, and most importantly, how vital are the services the assets provide.

d. Summarize levels of use and relative importance of each social asset to the various types of users.

3. Suggested Approach and Sources of Information: Personal interviews and other survey methods are useful in assessing attitudes of users. Both quantitative and qualitative information is helpful. Future availability and operation of an asset are also of critical importance to union and community leaders, and they should be consulted when assessing the user attitudes of social assets. Appendix 3 describes in greater detail key considerations for understanding user attitudes, survey methods and also includes a sample questionnaire. Exhibit I-E provides an example of information that can be gathered about the asset and from the user survey that will be useful during the decision making process.

EXHIBIT I-F

PHYSICAL CONDITION

	RESORTS Name	Year Built	Type of Construction		Major Repairs Required	Estimated Cost (zł mln)	Comments
1.	Zakopane Resort	1956	Masonry	a.	New Roof	150	15% of roof not usable until repaired
				b.	Electrical wiring	125	Old wiring is a fire hazard must be replaced
				c.	Landscaping	30	Plant new grass and trees
				d.	paint all rooms	50	Rooms not painted for 10 years
				e.	New furniture	225	All room furniture needs to be upgraded
	TOTAL					580	
2.	Sopot Resort	1948	Wood & Brick	a.	Weather proof	188	Outside must be weather proofed
				b.	Insulation	120	Put new insulation in attic
				c.	New Windows	270	All windows must be replaced
				d.	Paint rooms	200	All rooms not painted for 8 years
					TOTAL		

F. Assess the Physical Condition of the Social Assets

1. Key Considerations: Because of lack of funds, many social assets have not been well maintained. Therefore, many need considerable maintenance and repair work. The cost of this required work must be included in any plans for the future of these assets.

2. Suggested Tasks:

a. Prepare a physical description of each social asset including age, location, etc. (This should be available from the information gathered in sections A. and B.)

b. Develop a list of required repairs. The categories discussed in Appendix 4 are some of the primary ones that should be included to insure that the list is complete.

c. Estimate the cost of repairs. The company may have staff who can perform this cost estimating work, or it may be necessary to consult with outside engineers or contractors in order to get accurate estimates.

d. Organize the list of repairs into priorities for each asset. Exhibit I-F is an example of a list of needed repairs and the cost estimate for those repairs. An example of a comprehensive maintenance list of repairs and a five year budget for enterprise-owned housing is included in Appendix 4.

3. Suggested Approach and Sources of Information: The employees who are responsible for maintaining each asset will have detailed knowledge of needed repairs and should be consulted. The survey of users of the social assets may also provide valuable information about improvements which would increase the appeal of the assets and thus increase their revenues. The surveys should be reviewed and any improvements suggested by users should be noted. Finally, the financial analysis described in Section C of this chapter may also help in identifying repairs or maintenance which should be done. For example, it may show that excessive amounts of water are being used, which would indicate leaks in pipes which should be repaired, or it may show that heating costs are too high because of an obsolete and inefficient heating plant.

EXHIBIT I-G**LEGAL STATUS**

Description	Ownership Status	Lease or User Agreement	Legal Issues and transfer fees
Culture House Billard room Cafe	Holds title	Own facilities Lease foyer to billards Lease cafe	450,000 per month + 2% of revenues 15 mln per month + 5% of revs
Housing: Location 1 Location 2	Holds title No title	12 leases 65 leases	Holds title on each individual unit Need to settle ownership issue

G. Review the Legal Status of Social Assets

1. Key Considerations: The company's flexibility in planning for the future use of social assets depends partly on their legal status, the ownership of the land, and whether there are existing operating agreements or leases. Also, certain levels of social asset operation may be required by existing law or union agreements. It is important for the company to identify and appraise legal barriers on a timely basis and initiate efforts to deal with them.

2. Suggested Tasks:

- a. Check ownership titles of property.
- b. Clarify inconsistencies or get title if missing.
- c. Review and verify existing contracts, e.g. leases, particularly in view of potential termination of such a contract.
- d. Calculate and review transfer and notary fees; note: notarial fees can be negotiated between company and notary - see Appendix 9.

Exhibit I-G is an example of one way to compile legal information.

3. Suggested Approach and Sources of Information:

Ownership titles are to be checked with the land register (Księga Wieczysta). Clarification or initiation of missing ownership title would normally involve the "owner" of the company, which is for this purpose the relevant Ministry, and a notary public for the procedural matters.

This work must be done by the company lawyers or by a law firm.

H. Summarize the Analysis and Prepare a Management Report

1. Key Considerations: The asset analysis will be most useful to company decision makers if it is summarized. Once management has completed its financial analysis and market research, it can assess the priority level of each social asset. In order to assess those priorities, it may help to look at the social assets in graphic relationship to each other. Chart I-H shows one way to do this using two criteria: the amount of company subsidy needed by each asset; and importance or value of the asset to users. The first financial criterion, provides a quantifiable ranking, the second criterion provides a general attitude of users, to which an actual number may or may not be possible to attach. However, by combining the two scales management will have information with which to assess the cost and benefits of the asset. It is important for management to recognize how asset importance relates to asset cost. That relationship will help determine the priority of the asset and its future role with the company. It will also reveal those assets which require a large subsidy, yet provide low value to employees and therefore the company.

CHART I-H

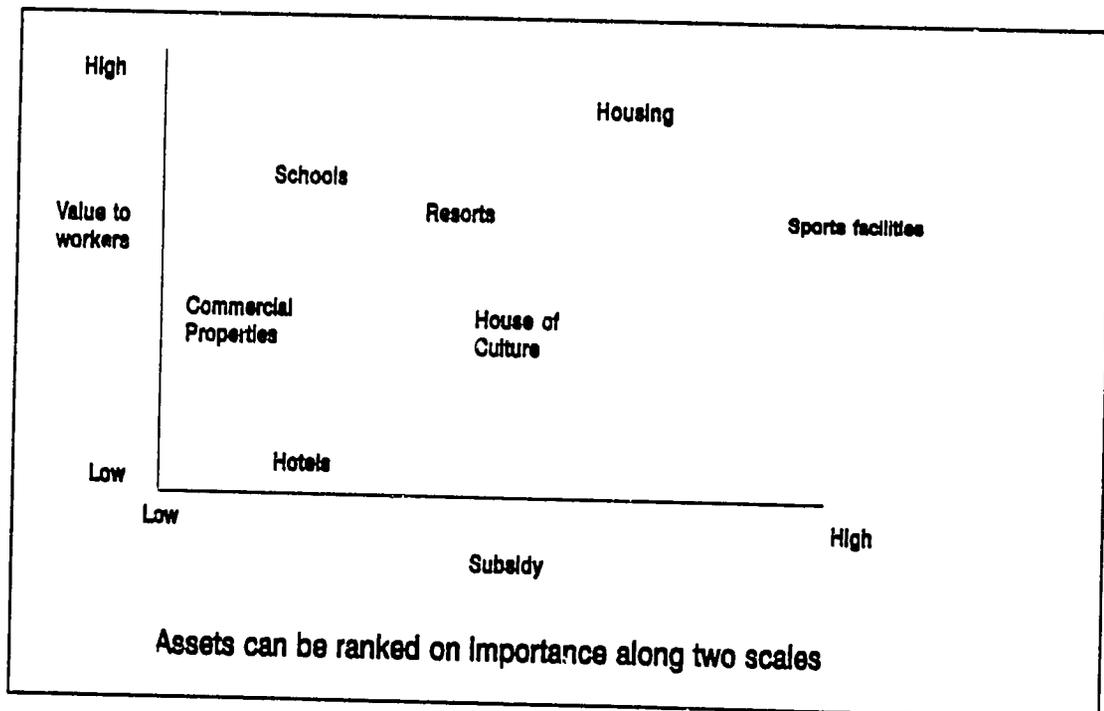


EXHIBIT I-II

SUMMARY OF SOCIAL ASSETS

<u>Asset</u>	<u>Physical Description</u>	<u>Legal Status</u>	<u>Number of Employees</u>	<u>Revenue</u>	<u>Operating Expenses</u>	<u>Subsidies</u>	<u>Future level of Employment</u>	<u>Estimated Other Costs</u>
Housing	37 buildings needs remodelling	holds title	33	2,781	3,976	1,200	36	5,000
Cult. House	1 building needs remodelling	needs title	44	780	2,400	1,620	35	500
Ice Rink	indoor condition poor	needs title	9	0	35	36	2	Close down
Pool	indoor/outdoor new foundation	holds title	11	75	87	12	6	50
Etc.								

2. Suggested Tasks:

- a. Use data collected earlier to make a summary table as shown in Exhibit I-H.
- b. Rank the assets in relation to each other as shown above.
- c. Prepare a summary report for top management, including the comments of the people who performed the detailed analysis.
- d. Present the analysis to top managers.

3. Suggested Approach and Sources of Information: The time to summarize is also the time to check if all relevant information has been gathered. The preceding suggested tasks should provide all of the information needed to make a workable plan for social assets.

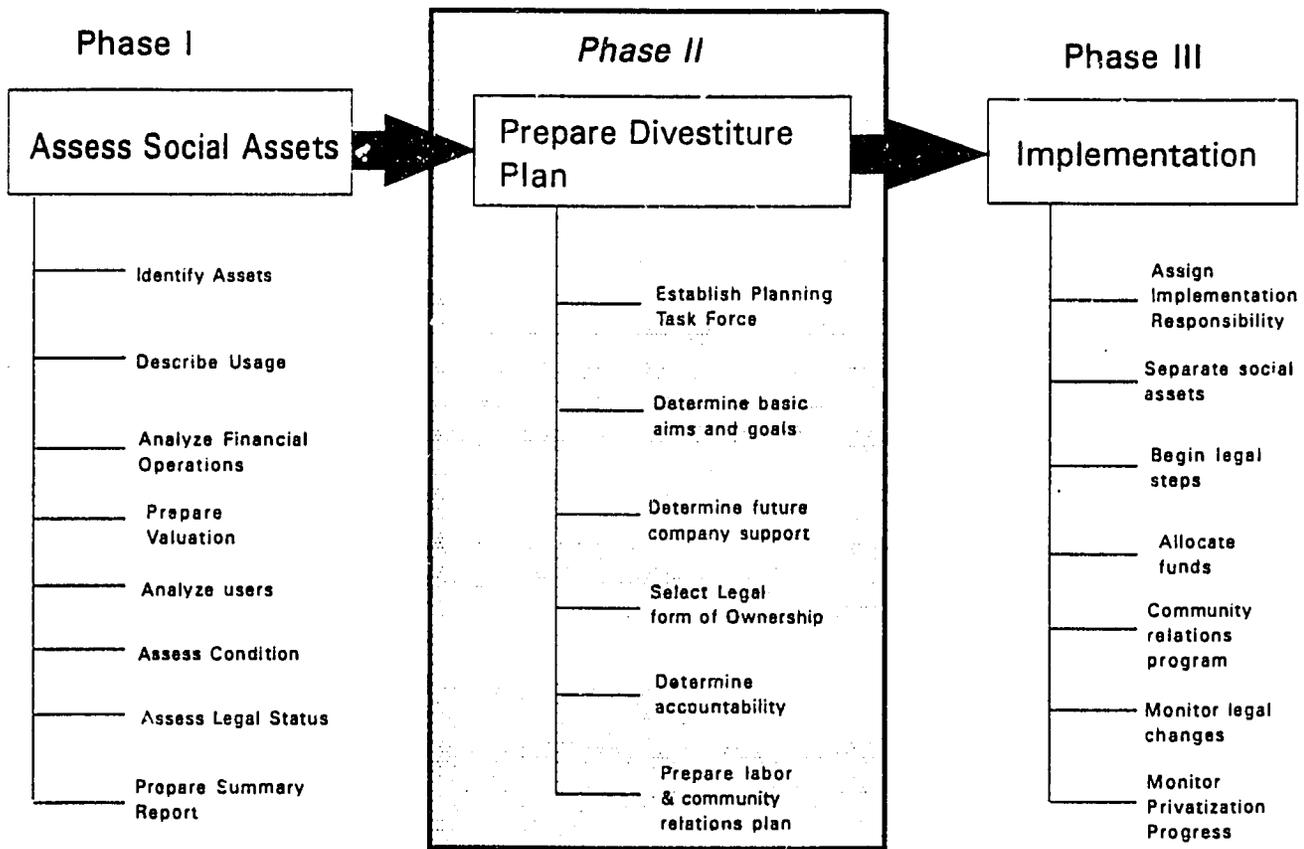
Schedule a meeting among the people who performed the analysis and the top managers of the company. Present the summary information and discuss each social asset. This is the time to set the stage for decision making by top managers and other important persons.

4. Decision Points: After assessing the assets and user data, management must decide whether to proceed to the next stage of preparing divestment plans. If the company owns only a few social assets, for example, a restaurant or a worker's hotel, it may not be cost efficient or necessary to do any more than explicitly recognize the operating costs of these facilities. On the other hand, a large inventory of social assets, which translate into greater costs for the company, or high level of employee concern, will affect the decision making process.

It is important to consult with the union leaders before any final decisions are taken so as not to be caught unaware that steps decided or under consideration are unacceptable to employees. Decisions that must be made include:

- a. Is the inventory of social assets great enough to proceed?
- b. Are the costs of the assets material? How will those costs impact on the privatization of the operating company?
- c. What is the level of employee interest in the assets? How will that interest affect potential divestiture options?
- d. Will the physical condition of the assets require further steps? How will the physical condition affect divestiture options?
- e. How will the legal issues relating to the assets be resolved?
- f. What is the time frame to make each of these decisions?

Social Asset Divestiture Steps



PHASE II. PREPARE THE DIVESTITURE PLAN

With the analysis phase concluded, the company can begin to prepare a plan for divesting its social assets. The tasks recommended for this phase of activity are as follows:

- A. Establish a planning task force,
- B. Determine the basic aims and goals of each social asset,
- C. Determine the type and level of future company financial support,
- D. Prepare a labor and community relations plan,
- E. Select the legal form of ownership most suitable for each social asset,
- F. Determine management and accountability for each social asset.

Each task is explained in the text that follows. In addition, a discussion of some of the choices available to companies and the potential advantages and disadvantages of each choice is included.

A. Establish a Planning Task Force

1. Key Considerations: It is assumed that the company has performed the analysis and sought information and views from other affected parties, as described in the analysis phase. During the planning phase, the company must decide which groups or individuals will have a role in the decisions made for each social asset. For example: How should the unions be involved in the process? What role should community leaders or other non-employee groups have? Will outside investors want to participate?

Groups that will have a role in the decision-making process should be represented within a planning task force. There could be only one task force for all social assets, or if the social assets are numerous and have varied users, more than one task force. However, there should still be one person responsible for coordinating the activities of all task forces.

2. Suggested Tasks and Decisions

- a. Determine the membership profile of the task force(s).
- b. Select the membership of the task force.
- c. Determine and assign responsibilities within the task force.
- d. Determine and commit staff and other needed resources.
- e. Set a schedule for completing work.

**Defining the Basic Aims
of the Social Asset**

When determining the basic aims of a social asset it is important to recognize what its past activities were and whether these activities are still in demand today. For example, some programs offered at the culture house in the past, may not be highly demanded in a market environment. Folk dancing or theatrical productions, may be replaced by films or discos. Such events might be more appealing to young people, attract a wider audience, and be less expensive to stage. The labor and community relations plan discussed in II-E will help in determining what is demanded by users of the asset

Below is an example of some elements that should be included in a mission statement. The example focuses on holiday resorts.

	PAST	FUTURE
Employee/ Users	Provide subsidized vacations.	Provide subsidized vacations within a predefined budget.
Other Users	Secondary to employees	Increase resort usage by non-employees.
Viability	Not intended as a profit center. Primarily a source of vacations.	Operate as a profit making venture, or at least at break-even.
Service Level	Not an important consideration.	Provide efficient and quality service to users.
Employment	Source of employment.	Sufficient to meet demand.
Quality	Minimize maintenance costs.	Maintain buildings to a high standard.

B. Determine the Basic Aims and Goals of Each Social Asset

1. Key Considerations: Having performed the analysis as described in Phase I, the management will know a great deal about who uses the various social assets and the costs and losses incurred by those assets in the recent past. This analysis can form the basis for deciding on the future aims and goals of each social asset. When determining the goals of an asset, the managers of the asset, as well as the general director of the company, if appropriate, should contribute to defining the purpose of the asset. It is important that the future definition of the asset be clearly specified and why the actions to be taken were decided on. For example, it may be decided that a particular social asset, such as a sports club, should be operated exclusively for company employees. The statement of goals should clearly state why that determination was made. Alternatively, it might be decided that the club provides important community benefits and that non-employees should also be served. On the other hand, because of excessive costs, or lack of user interest, the most appropriate action may be to simply close the club. The point is, that decisions for action should address either the benefits or reasons for the action in a positive framework and with discussion as to why that decision was made.

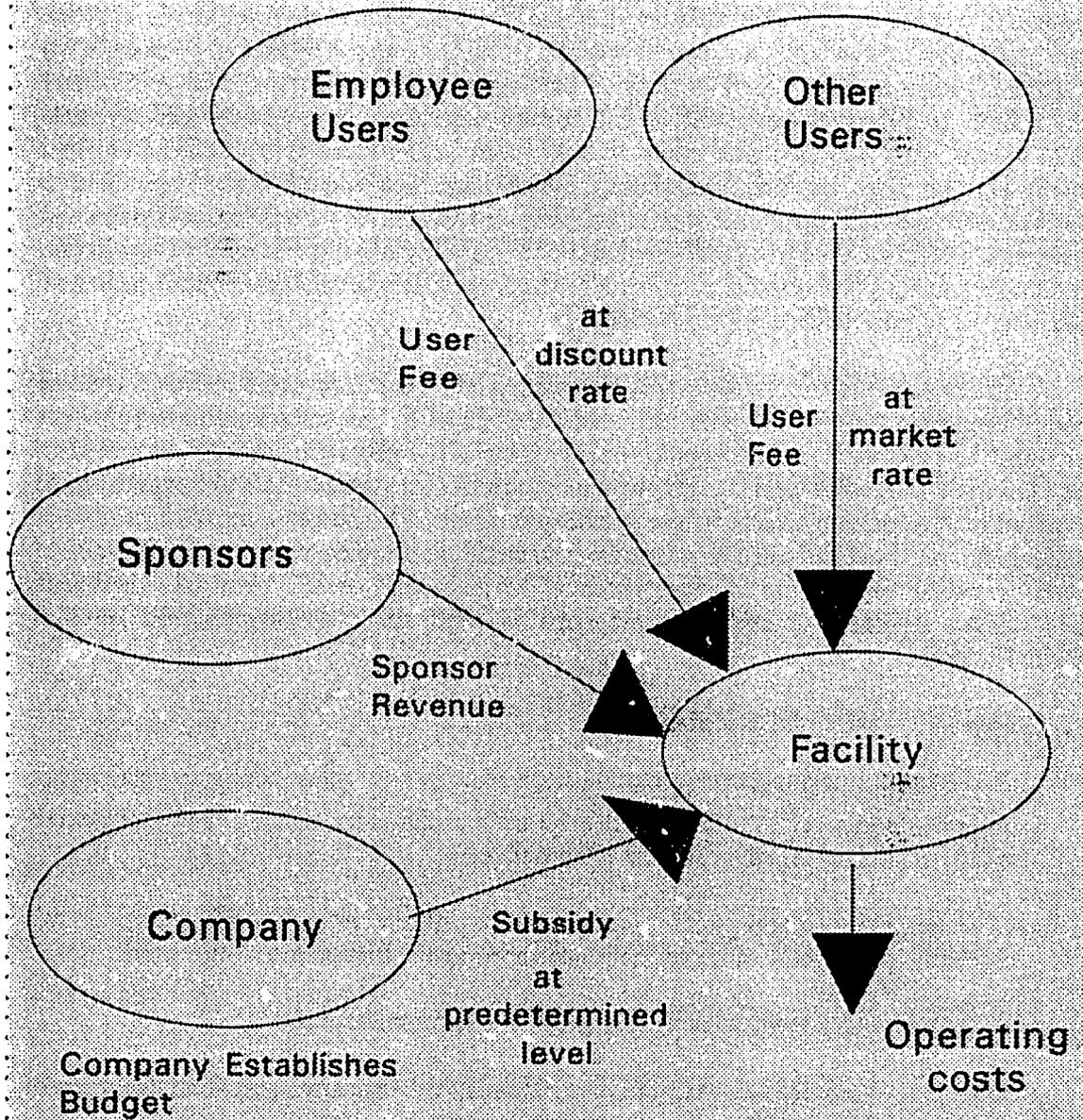
Other questions to consider when determining asset aims and goals include: Are the types of programs and services provided what is demanded? Can current programs that are underused be replaced by more popular ones? Even if the programs are popular are they cost effective? (In some cases, a program may actually be popular, but too expensive to run at current admission prices, while higher prices are not feasible. In such instances, management must decide whether to continue to fund the program or not.) What types of programs would be likely to increase revenues to the social asset? How will decisions about which customers to serve and programs to offer affect the sources and level of financial support?

2. Suggested Tasks and Decisions

- a. Determine and clearly define the mission of the asset including the future programs and services to be provided by each social asset and the asset's projected status (including whether closure is an option).
- b. Determine the appropriate user group(s). If the primary user group is not company employees, this may help determine the future status of the asset.
- c. Prepare a statement of aims and goals for each social asset

Exhibit II-B provides an example of a statement of basic aims and goals for a resort facility, both past and present.

Financial Support



C. Determine the Type and Level of Future Company Financial Support

1. Key Considerations: Decisions concerning future company financial support must be made by the company and its owner/investors. Exhibit II-C graphically illustrates sources of potential financing for an asset.

The company must ascertain how much financial support it is willing to contribute to keep each asset operating. The worker value/subsidy chart I-H will help in this decision. If the asset is of low value to users and requires a large subsidy, continued funding may make little sense. On the other hand, if the asset provides high benefit to the community at large, other options should be explored. See Appendix 5 for a more detailed discussion of employee benefits and managing their cost.

Once the company sets an employee benefit budget, it must decide how to allocate that budget among the various facilities. It will also need to determine the appropriate subsidy method. Subsidy methods include: (1) direct cash payments from company to asset; (2) payment of all or part of user fees on behalf of employees; (3) employee-user subsidy as part of the employee benefit package (quantifying the benefit package employees receive on a per employee rather than facility basis); or (4) indirect subsidy method such as providing heating or water from company-owned facilities or administrative or maintenance support by company employees.

The company may also wish to make both a short-term and long-term plan for financial support. It may not, for example, be possible for a particular social asset to become self-supporting in the short-term. In such situations, assuming the asset is popular, the company may choose to offer financial assistance for several years on a declining basis. Such a decision can be reflected in the five year operating projections prepared for the asset. Such modelling will help the asset management to estimate their budgetary needs and begin looking for other sources of funds outside of the company.

2. Suggested Tasks and Decisions

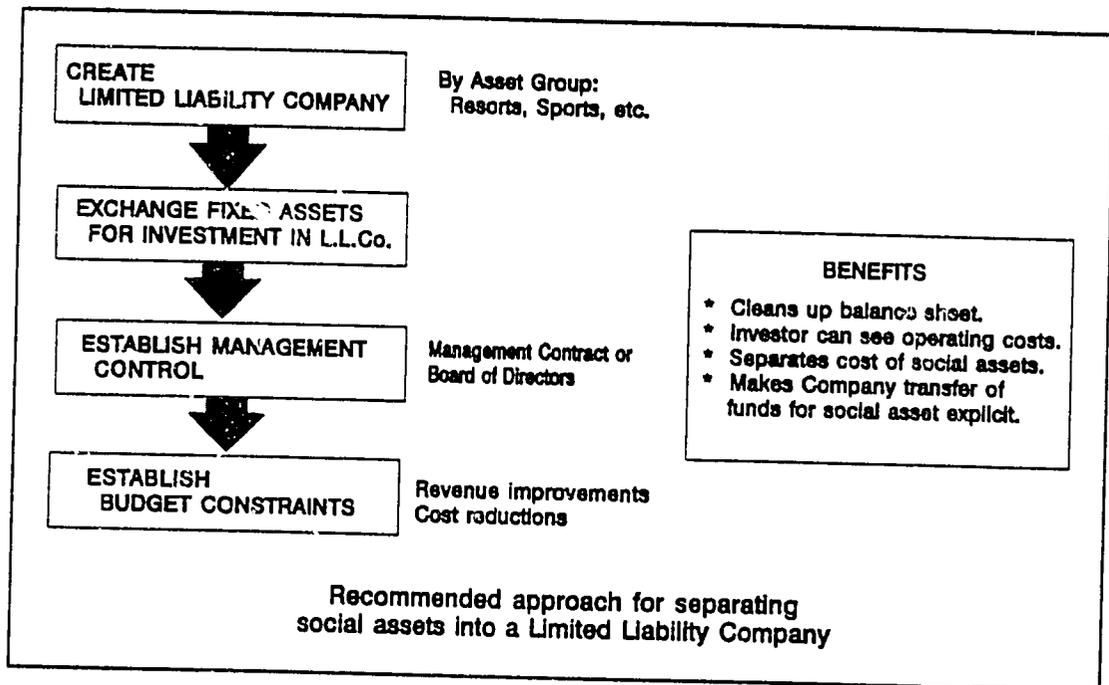
- a. Review the past level of company financial support.
- b. Review the use of the asset by company employees and other user groups.
- c. Determine whether the company will continue to offer financial support (short- and long-term).
- d. Determine the method of company support (direct cash subsidies, in-kind contributions, labor contributions, etc.).
- e. Determine whether and how much outside financing is needed and how to obtain it.
- f. Assess the ability of each social asset to obtain financing from sources outside the company (for example, shared use with other companies, higher user fees for non-employees, sponsorships, leasing all or part of the premise, etc.).

D. Select the Most Suitable Legal Form of Ownership for Each Social Asset

1. Key Considerations: One formal aspect of encouraging accountability is to separate the social asset from the company. This removes the asset from the books of the company and replaces it with investment in other companies. By separating the asset, it is also easier to analyze the operating company, the actual funds provided to the social asset and other resources used by the asset. There are five legal forms of ownership available. These are:

- a. Profit Center in the Company: The company may decide to maintain the status quo. However, separation is still recommended so that costs can more easily be analyzed, differentiated and accounted for.
- b. Limited Liability Company: The company may decide to transfer the ownership and control of the social assets into a limited liability company ("LLC"), created for that purpose and still 100% owned by the company. This Guidebook takes the view that in most circumstances, separating the assets into an LLC is the recommended first step, especially since transfer can be accomplished at minimal cost and with no tax implications if the LLC is a subsidiary of the company.
- c. Joint-Stock Company: For larger transfers of assets the company may decide to create a joint-stock company. In general, this Guidebook takes the view that a joint-stock company is not an appropriate form of organization to transfer social assets to. Joint-stock companies have strict reporting and capital requirements and if created, in certain circumstances such as privatization through liquidation, could cause difficulties with respect to the privatization of the operating company.
- d. Cooperative: The company may decide to create a cooperative in which to carry on specific economic activity taking into consideration the needs of its members.
- e. Foundation: The company may decide to create a foundation that operates for a specific social or economic "useful" purpose, such as for the protection of health, promotion of economy and science, education, culture, social welfare, protection of environment and monuments.

CHART II-D



As Chart II-D above demonstrates, it is generally recommended to transfer social assets into a LLC as the first step toward divesting those assets.

See Appendix 6 for a more detailed discussion of the legal aspects of each form of ownership as well as advantages and disadvantages for each form.

2. Suggested Tasks and Decisions

- Identify the legal forms most applicable for each social asset
- Evaluate the forms of ownership in light of the asset's aims, the company's future involvement and the type of oversight and management selected. See Appendix 9 on the legal steps required to separate the assets.
- Determine and select the best form of ownership for each asset. Appendix 7 contains a discussion of various ownership options.

E. Prepare a Labor and Community Relations Plan

1. Key Considerations: It is important to eliminate obstacles which could cause resistance to or hinder the implementation of the company's chosen strategy to manage or dispose of ancillary assets. Possible obstacles to implementing the strategy may be:

- o lack of awareness among employees and community of the privatization process and of the divestiture of ancillary assets as an important part of that process;
- o lack of information and understanding among employees and community as to the company's plans for the social assets;
- o lack of understanding of how the free market works;
- o failure to see privatization as an "opportunity";
- o inaccurate perceptions of ownership or right to use of certain assets;
- o desire to maintain the status quo;
- o feeling of unfairness or resistance about the asset's changing nature or ownership.

To successfully implement its asset ownership strategy, the company must develop a marketing plan that is designed specifically to persuade asset users of the benefits of the strategy and gain their support for that strategy. A marketing plan is a promotional tool intended to present the company's strategy in a positive manner and encourage the users of the asset to accept and embrace its benefits.

It is important to develop this communications strategy with union participation. Those doing the communicating must be sensitive to the fears and anxieties of employees arising from the privatization process of the company and from lost benefits due to the divestiture of social assets. Workers may be accustomed to having, or expecting, certain services and facilities provided to them. They do not recognize that there is a cost to the enterprise associated with these services or maintaining the facilities. For these reasons employees may perceive the divestiture/separation of certain social assets as depriving them of needed services. The company must take into account this perception and strive to explain why and how the status of the asset or delivery of the service is changing.

2. Suggested tasks and Decisions:

- a. Designate a responsible person/institution to coordinate the campaign and serve as spokesperson.
- b. Define the audience for the promotion campaign. This requires determining the users of the assets and their relationship to the company, i.e., employee, trade union member, non-employee or retiree of the company, as well as potential investors. Information on other social-demographic characteristics of users such as age, gender, education and place of residence may also be useful.

**ILLUSTRATIVE HIGHLIGHTS OF THE
COMMUNITY RELATIONS CAMPAIGN
FOR THE SALE OF ENTERPRISE HOUSING**

THE GOAL: The goal of the community relations campaign is to clearly communicate the company's strategy for separating enterprise housing to encourage support for the plan.

CAMPAIGN COORDINATOR: Questions or comments regarding the implementation of the campaign should be directed to the privatization director who is responsible for coordinating the campaign.

TARGET AUDIENCE: The community relations campaign will address all residents of company-owned housing, including employees, non-employees and pensioners.

THE MESSAGE:

(1) **The reason for the sale of enterprise housing:** Enterprise housing is being sold to remove the non-business assets from the company, so that the company can concentrate on regaining profitability.

(2) **The benefits of home ownership:** Ownership presents an opportunity to: build equity and realize profit on future sale; control of the apartment and pass it on to heirs; improve the standard of the apartment and realize a return on those improvements through increased market value; gain collateral that can be used for other investments.

(3) **Responsibilities of being an owner:** Owners will be responsible for their apartment and its purchase, including: closing costs (notary fee, stamp duty, etc.); ongoing costs such as mortgage payments, utilities, property taxes, insurance, maintenance and repair costs of the individual apartment and a maintenance fee for common areas, trash collection, etc.

(4) **Residents who reject the Companies offer:** If residents choose not to buy their apartment the following options are available: they can continue to rent but may be required to move to a different apartment at the request of the company; they will be obligated to pay rent increases as those occur.

MEDIA: The message can be communicated through the following media: formal meetings with management, labor unions, housing residents and other members of the community; information announcements broadcast over the plant radio network; explanatory articles published in the company newspaper and local press; an information brochure for distribution to housing residents.

BUDGET AND TIMETABLE: The duration of the campaign is six to eight weeks beginning approximately one month before the sales offers are sent and lasting about one month after the offers have been received. A budget should be based on media requirements and staff to conduct the campaign.

c. Determine the message to be communicated. First, explain the company's solutions to the ancillary asset problem clearly and fully. Second, show how the benefits of the company's plan outweigh the disadvantages. Third, tailor the communications strategy chosen to the characteristics of the particular asset and its users.

d. Select the methods of communication. For example, communications strategies could include:

1. Formal meetings with representatives of management, labor unions, employees and other members of the community;

2. Radio broadcasts;

3. Press articles (local, national);

4. Press conferences;

5. Information brochures;

e. Determine a budget and timetable for the marketing campaign. The amount of time and funding for each social asset can be determined by assessing the relative importance of each asset based on information obtained from the survey in the analysis phase.

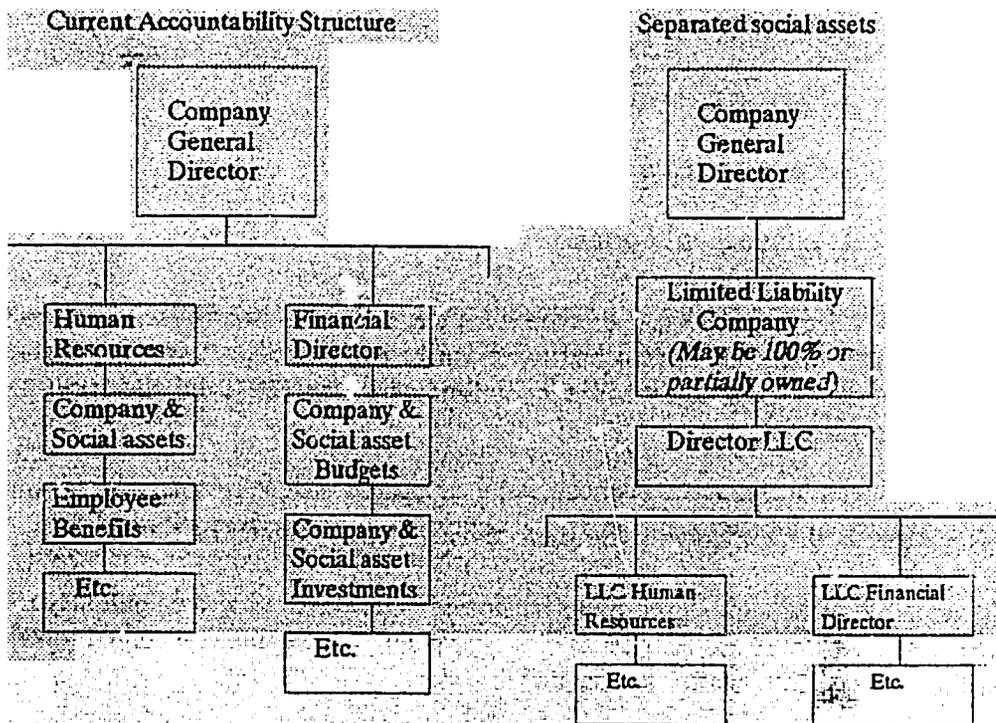
f. Revise the promotional campaign as needed. Based on feedback from users, changes in the campaign or in the company's strategy may be required.

An example of some issues to be considered when developing a community relations campaign are presented in Exhibit II-E. Appendix 3, contains a detailed outline for preparing a community relations campaign.

ACCOUNTABILITY

The individuals responsible for managing an asset are ultimately accountable for the profit or loss of those assets. By separating the assets from the operating company, a structure is created which encourages accountability from those responsible for the asset. In addition, formal reporting requirements between the owner (Company) and the asset should be required so that the owner receives timely and useful information on the profit or loss of the asset.

Below is an example of an organization chart, demonstrating the line of authority and accountability for a social asset. The chart shows the organizational structure historically and as recommended through a Limited Liability Company.



Under the current structure, the directors of the various departments are also responsible for similar functions with regard to the social assets, there is no single person with ultimate responsibility for all asset operations.

Under the separated structure, the company appoints a social asset director who sits on the board of each asset LLC. His primary concern is that the social asset is either profitable or provides the services for which the company is providing a subsidy. This structure makes one person directly accountable for each social asset to the owners.

F. Determine Management and Accountability for Each Social Asset

1. Key Considerations: Having decided on the mission and goals for a social asset and on the company's future financial commitment, it is possible to decide who will be responsible for overseeing and managing the social asset. If a social asset is to serve company workers exclusively and receive most of its income from the company, it is logical for the company to have a strong voice in its affairs. If the company will be only one of several financial supporters, oversight would logically be shared with others.

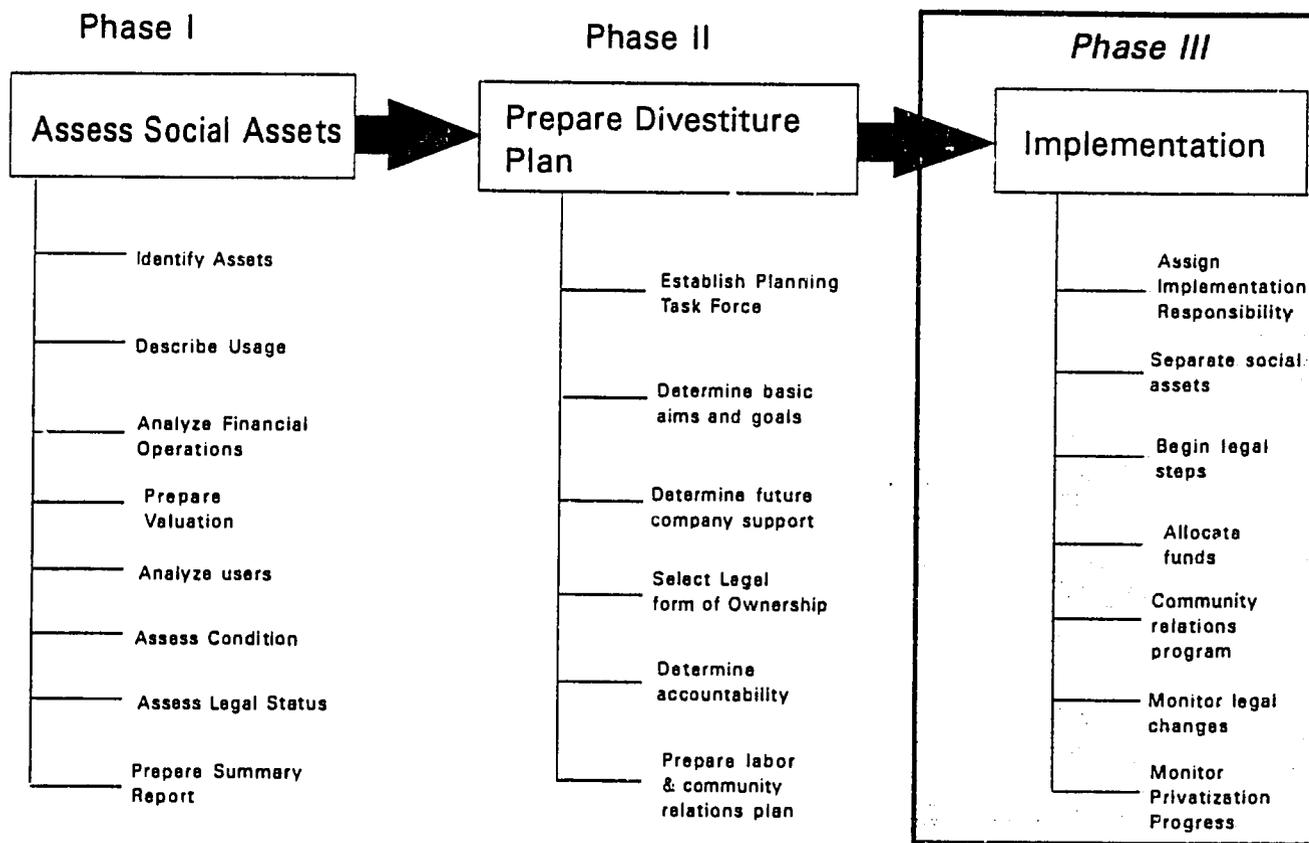
Depending on the legal form of ownership chosen, oversight may be quite formal as with a joint-stock company, or somewhat informal. What is important at this juncture is to decide who should have a voice in the operations of the asset.

Accountability is a critical element in determining the future of each social asset and how it will be managed. It means clearly identifying that person or group of persons responsible for achieving performance standards set for the asset, both financial performance and efficient and effective delivery of goods or services demanded by users. Once management (either the company or the social asset management) or other supervisory body has determined goals based on revenue projections, operating budgets and other issues, asset management must be accountable for achieving those goals. If they are not successful, asset management must take responsibility. Should management fall short of stated goals, those goals should be reviewed as to whether they were too ambitious. If goals are consistently not met, asset management should be replaced. See Appendix 8 for various operating options and how they affect the issue of accountability.

2. Suggested Tasks and Decisions: It is at this stage that the final decisions will be made as to whether to proceed to the next phase: implementation. The decision on who will ultimately be accountable for the operation and oversight of the asset is critical if the plans developed will proceed and be successful. Operating and management decisions must take into account the amount of flexibility provided to the asset manager (decision-maker) to cope with issues unforeseen when the initial divestiture and operating plans were drawn up. Other key decisions to be made when deciding on and assigning accountability for each social asset include:

- a. Deciding which groups or individuals will have policy oversight for each social asset,
- b. Deciding which groups or individuals will have responsibility for day-to-day operations,
- c. Determining a management approach for each social asset (or giving authority to the asset manager to decide on the approach),
- d. Drafting a management plan,
- e. Clearly establishing asset goals (i.e. achieving projected revenues, usage goals etc.).

Social Asset Divestiture Steps



PHASE III. IMPLEMENT THE DIVESTITURE PLAN

At this juncture the company has prepared its divestiture plan for each social asset it owns. It is critical that a detailed plan be prepared so that all of those involved are clearly aware of their responsibilities. The plan should be of sufficient detail to outline the goals of the company with respect to each social asset as well as the immediate and longer-term objectives of the asset. In addition, the plan should contain a time schedule for implementing the steps necessary to achieve separation and divestiture goals. The timing and steps of implementation will probably vary among the various social assets, largely because of differing barriers the company will encounter. While the implementation process should follow the steps detailed in the divestiture plan, it is also important that the plan contain some flexibility in order to manage unexpected obstacles. The Plan should also contain an element of monitoring and reporting by all persons involved so that implementation is carried out on schedule and within budget. In general Implementation includes the following tasks:

- A. Assign responsibility for implementing the plan,
- B. Separate the social assets from the operating company,
- C. Begin the legal steps for divestiture and possible privatization,
- D. Allocate company funds according to the plan for each asset,
- E. Implement and monitor a community relations program,
- F. Monitor ongoing legal and legislative changes that may affect company plans,
- G. Monitor the progress of divestiture.

Each of these tasks is discussed more fully below.

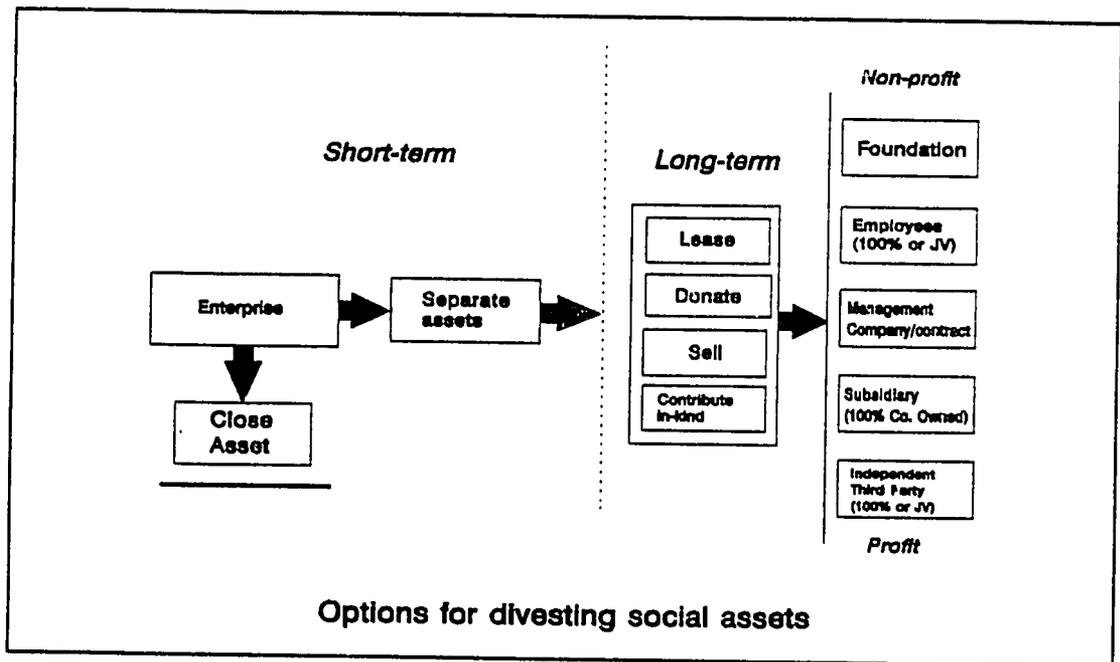
A. Assign Responsibility for Implementing the Plan

A single individual within the company should be made accountable for implementing the divestiture plan. It should be someone with direct access to and the confidence of the top management. This person must be given the resources needed to implement the plan. Those resources may include company staff to perform certain tasks or company funds to pay outside experts, such as lawyers, to prepare social asset groups for separation or privatization.

B. Separate the Social Assets from the Operating Company

In general, it is recommended that social assets, other than those destined for closure, be separated from the company. Separation will encourage accountability of the asset, remove the asset from the books of the company, thereby encouraging separate accounting and control. Chart III-B below provides an illustration of the steps for separating a social asset from the company. It should be noted that the first step, separation, can be completed quickly, while the eventual sale, lease or transfer, may be a multi-year process. The reasons for such a long timeframe are that there may be a need to resolve legal issues; current law may discourage sale; there may be a lack of interested buyers; buyers may have insufficient capital to purchase the asset. What is important is that the asset is separated so that it is ready to be quickly privatized at the appropriate time.

CHART III-B



C. Begin the Legal Steps for Divestiture and Possible Privatization

For those assets whose legal form of ownership is to be changed, the process should begin as soon as possible. The process will be somewhat different for each social asset. The Divestiture Plan should contain sufficient detail of the goals of the company with respect to the disposition of the social asset and the required legal steps to achieve those goals. For example, creating a foundation and transferring the assets into the foundation by some specified date. Appendix 9 outlines some of the necessary legal steps for separating assets. Appendix 10 contains samples of notary deeds and other official documents that must be prepared.

D. Allocate Company Funds According to the Plan for Each Asset

Among the most important implementation steps will be for the company to bring its funding approach and level in line with the plan established for each social asset. This may mean increasing or decreasing company subsidies as well as changing the subsidy method. Such changes should be recognized as a part of the implementation procedure.

One of the most critical steps the company must take is to separate the financial reporting for social assets within its accounting records. Unless separate financial reports are prepared, it will be difficult for management or the implementation supervisor to assess the operating status of the social asset or the progress of its separation, divestiture, or future operations, should it remain in the company. This can be done most simply by establishing a separate cost center for each social asset and requiring the asset to keep separate books for its operations. The company should also begin preparing regular financial reports on its support for each asset individually.

E. Implement and Monitor a Community Relations Program

Once the attitude of users of assets has been surveyed and a campaign designed to promote the company's separation strategies giving respect to those attitudes, the company must monitor the success of the program. Opinions change, laws change, financial incentives change, all of which can affect original plans. The company must keep track of these changes. As separation strategies are altered to reflect new realities, the community relations program must be modified to reflect and communicate these changes.

F. Monitor Ongoing Legal and Legislative Changes

The legal situation in Poland is changing. The company should monitor the status of laws that affect its social assets and its plans for them. Law changes may permit the company to accelerate privatization. Law changes might also require that the company alter its strategy for particular assets. Because of the status of the law, in some instances, it may not be feasible to complete a divestiture plan at present. In such cases, certain implementation steps can still be taken (such as separating into a limited liability company and separating the books). The asset can then operate as a separate cost center until the necessary legal or tax changes have been enacted to allow for divestiture or privatization. By carrying out such steps, the process will be accelerated when the appropriate time arrives to begin action. Appendix 14, contains a brief discussion of some of the current legal proposals being considered with respect to housing.

G. Monitor the Progress of Divestiture

The company must keep track of the status of its divestiture plan for each asset. There are a number of steps essential to successful monitoring.¹ These include:

¹ Adapted from Irwin T. David, "Privatization: Steps to Successful Implementation," The Privatization Review, Volume 6, Number 4, Fall 1991.

- 1) well-defined performance standards for all those involved;
- 2) a reporting system that reports performance and identifies a person responsible for preparing regular written progress reports for top management. The reports should note the steps completed and any obstacles that have arisen;
- 3) one or more individuals responsible to follow-up on problems encountered in implementation. These individuals should have the authority, or access to authority, to resolve problems.

IV. APPENDICES

- Appendix 1. Example work plan
- Appendix 2. Analyzing Financial Operations and Preparing Projections
- Appendix 3. Analyze the Market Users
- Appendix 4. Capital Improvements and Expenditures
- Appendix 5. Changing Employee Benefits from Managing Assets to Managing Costs
- Appendix 6. Legal Overview of Ownership Forms
- Appendix 7. Ownership Options and Facilitating Ownership
- Appendix 8. Operating Options
- Appendix 9. Steps for the Separation and Sale of Enterprise Property
- Appendix 10. Sample Documents
- Appendix 11. Tax Implications for Separating Housing
- Appendix 12. Review of Polish Housing Laws
- Appendix 13. List of Relevant Laws
- Appendix 14. Government Proposals for Housing

EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				Total Days
NO.	TITLE	TASK NO.	TASK DESCRIPTION	Review Prv. mgr Days	Assess Staff Days	Other STAFF Days	TAX and Legal Days	
1.0 ANALYSIS OF THE ASSETS AS A GROUP								
1.1	SOCIAL ASSET COST IS LESS THAN X% OF ALL ENTERPRISE OPERATING COST	1.1.1	Review 1991 company financial statements					
		1.1.2	Determine usability of company provided data; challenge data			1	2	
		1.1.3	Format data for analysis					
1.2	EMPLOYEES WORKING IN THE SOCIAL ASSETS ARE Y% OF COMPANY WORKFORCE	1.2.1	Collect data on company employees by function					
		1.2.2	Format data for analysis				0.5	
1.3	REMOVING THE SOCIAL ASSETS WOULD INCREASE THE 1991 COMPANY VALUE BY Z%.	1.3.1	Restate 1991 Company P&L, assuming no social assets					
		1.3.2	Adjust other costs, as needed, to reflect separation of social assets					
		1.3.3	Prepare value re-estimate based on P&L	3	3	2		
		1.3.4	Review asset value estimates made by others					
		1.3.5	Restate asset value, excluding social assets					
1.4	DISPOSITION STRATEGIES SELECTED BY THE COMPANY AS OF JUNE 1992	1.4.1	Confirm disposition strategies with General Director					
		1.4.2	Prepare written summary of strategy by asset group and asset	1			1	
		1.4.3	Interview union leaders, community leaders to obtain views on disposition					
		1.4.4	Revise disposition strategies if needed and review with privatization manager					
1.5	LEGAL STATUS OF SOCIAL ASSETS	1.5.1	Prepare listing of all social assets by group					
		1.5.2	Interview appropriate manager to determine current status of each asset	0.5	1			4
		1.5.3	Review written documentation to confirm status of each asset					
1.6	HOUSING, SPORTS FACILITIES AND THE CULTURE HOUSE ACCOUNT FOR Y% OF ALL SOCIAL ASSET OPERATING COSTS	1.6.1	Collect and review cost and revenue by asset type and asset					
		1.6.2	Restate costs for each asset in a standard format					
		1.6.3	Compare total costs by asset category	0.5	1	2		
		1.6.4	Compile cost data in a for review by social asset privatization manager					
1.7	UTILITY COSTS AMOUNTED TO X% OF OPERATING COSTS FOR ALL SOCIAL ASSETS IN 1991	1.7.1	Group asset costs by type of cost, e.g. utility					
		1.7.2	Compare costs across asset groups	0.5	0.5	1		
		1.7.3	Prepare cost exhibit for review by privatization manager					
1.8	BREAKDOWN OF THE COST FOR EACH UTILITY: HEAT, WATER, ELECTRICITY	1.8.1	Compare costs across asset groups					
		1.8.2	Prepare cost exhibit		0.5	0.5		
1.9	HOUSING IS THE LARGEST COMPONENT OF THE SOCIAL ASSETS	1.9.1	Collect data on gross area and hectares by asset					
		1.9.2	Prepare table of areas by asset group				0.5	
1.10	Z% OF THE SOCIAL ASSETS ARE CONCENTRATED NEAR THE COMPANY PLANT	1.10.1	Prepare map of location of social assets					
					5.5	7	10	4

EXAMPLE WORK PLAN

ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				TAX and Legal	Total
NO.	TITLE	TASK NO.	TASK DESCRIPTION	Review Prv. mgr	Assess Staff	Other STAFF			
2.0	ANALYSIS OF THE HOUSING ASSETS								
2.1	COMPANY OWNED HOUSING COMPRISES A% OF ALL HOUSING IN THE CITY IN WHICH THE COMPANY IS LOCATED	2.1.1 2.1.2 2.1.3	Collect overall housing data from Gmina or other sources Tabulate housing units by type of owner, inc. Gmina, Company, etc. Compile information	0.5		3			
2.2	THE COMPANY PROVIDES HOUSING FOR B% OF ITS OWN EMLPOYEES	2.2.1 2.2.2	Collect and review data on residents by type of employer Prepare exhibit showing all Company employees and housing residents	0.5		0.5			
2.3	C% OF COMPANY HOUSING IS OCCUPIED BY RESIDENTS WHO HAVE NO CONNECTION TO THE COMPANY	2.3.1	Prepare exhibit showing percent of residents by occupation			0.5			
2.4	IN 1991, COMPANY HOUSING REVENUES COVERED LESS THAN D% OF OPERATING COSTS	2.4.1 2.4.2	Interview housing manager to undersdtand overall operations, issues Sumarize cost data for housing assets Compile report on housing issues for privatization manger review	0.5	0.5	4			
2.5	UNIT TURNOVER IN COMPANY HOUSING IS VERY LOW (i.e. APPX 1% PER YEAR)	2.5.1 2.5.2	Collect and review data on monthly move-ins Prepare report exhibit			0.5			
2.6	DISPOSITION APPROACHES, POTENTIAL BARRIERS	2.6.1 2.6.2 2.6.3 2.6.4 2.6.5 2.6.6	Confirm most likely disposition approach(es) Identify barriers by type of barrier, e.g. legal Identify possible actions to remove, minimize barriers Review possible asctions with management, unions, resident, community, etc Revise disposition strategies based on comments Prepare written assessment	0.5	1	5	5		
B.	PROJECTIONS								
2.7	STRATEGIES TO RAISE REVENUES AND REDUCE COSTS; BARRIERS	2.7.1 2.7.2 2.7.3 2.7.4 2.7.5 2.7.6 2.7.7	Identify strategy for each type of revenue and cost Quantify potential impact, costs involved to achieve the result Identify barriers to each type of change, e.g. legal, capital requirement Identify possible actions to remove, minimize barriers Raviev possible barriers with unions, management, residents, city etc. Revise stratagies based on comments Prepare written analysis	4	4	4	4		
2.8	HYPOTHETICAL 1991 BREAKEVEN PRO-FORMA	2.8.1 2.8.2 2.8.3	Determine added revenue, reduced costs required for 1991 break-even Assess feasibility of achieving break-even in future year(s) Prepare report for review by privatization manager	0.5	1	1.5			
2.9	FIVE YEAR OPERATING PRO-FORMA	2.9.1 2.9.2 2.9.3 2.9.4 2.9.5 2.9.6	Select assumptions for legal status, ownership, inflation rate, etc. Prepare five year pro-forma using assumptions selected Prepare sensivity analysis for key assumptions Review with Privatization manager, mangement and Gmina if appropriate Select one or more pro-formas for report Complete report exhibits and prepare for management disposition decision	0.5	3		0.5		
Total Days				7	9.5	19	9.5	45	

EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				Total	
				Review Prv. mgr	Assess Staff	Other STAFF	TAX and Legal		
NO.	TITLE	TASK NO.	TASK DESCRIPTION						
3.0	ANALYSIS OF THE SPORTS FACILITIES								
3.1	COMPANY SPORT FACILITIES COMPETE FOR USERS WITH OTHER FACILITIES IN TOWN	3.1.1 3.1.2 3.1.3	Survey all sports facilities owned by Gmina, other employers, etc. Prepare map showing location, with symbols for each type Prepare listing of capacities, limitations on who may use	0.5		2.5			
3.2	COMPANY EMPLOYEES COMPRISED A% OF SPORT FACILITY USERS IN 1991	3.2.1 3.2.2 3.2.3 3.2.4 3.2.5 3.2.6	Interview Company sport manager on program operation, cost, users, etc. Interview sport club director on programs, users, etc. Collect and tabulate data on event participants, sponsors, etc. for 1991 Determine need to sample current users for employment Collect sampl data, if needed Prepare estimate of Company users, compared to all users	1	1	3			
3.3	IN 1991, SPORTS FACILITIES' REVENUES COVERED LESS THAN D% OF OPER. COSTS	3.3.1 3.3.2	Sumarize cost data for sports assets, by facility, e.g. stadia, ice rink Prepare report for management review		0.5	0.5			
3.4	THE SPORTS FACILITIES ARE UNDERUTILIZED	3.4.1 3.4.2 3.4.3	Prepare estimate of "capacity" by facility Prepare estimates of actual uso in 1991 Prepare utilization report		0.5	0.5			
3.5	BARRIERS TO DISPOSITION PLANS	3.5.1 3.5.2 3.5.3 3.5.4 3.5.5 3.5.6	Confirm most likely disposition approach(es) Identify barriers by type of barrier, e.g. legal Identify possible actions to remove, minimize barriers Review possible asctions with management, unions, users, community Revise disposition strategies based on comments Prepare written assessment	2	1	4.5		4	
B.	PROJECTIONS								
3.6	STRATEGIES TO RAISE REVENUES AND REDUCE COSTS; BARRIERS	3.6.1 3.6.2 3.6.3 3.6.4 3.6.5 3.6.6 3.6.7	Identify strategy for each type of revenue and cost Quantify potential impact, costs involved to achieve the result Identify barriers to each type of change, e.g. legal, capital requirement Identify possible actions to remove, minimize barriers Review possible asctions with Company, unions, sport club/focus group Revise strategies based on comments Prepare written analysis	4	4	4.5		4	
3.7	HYPOTHETICAL 1991 BREAK EVEN PRO-FORMA	3.7.1 3.7.2 3.7.3	Determine added revenue, reduced costs required for 1991 break-even Assess feasibility of achieving break-even in future year(s) Prepare matrix and written analysis	0.5	1	2			
3.8	FIVE YEAR OPERATING PRO-FORMA	3.8.1 3.8.2 3.8.3 3.8.4 3.8.5 3.8.6	Select assumptions for legal status, ownership, inflation rate, etc. Prepare five year pro-forma using assumptions selected Prepare sensivity analysis for key assumptions Review pro-forma operating statements with Company management Select one or more pro-formas for report Complete reports	0.5	3				
Total days				8.5	11	17.5		8	45

EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				Total
NO.	TITLE	TASK NO.	TASK DESCRIPTION	Review Prv. mgr	Assess Staff	Other STAFF	TAX and Legal	
4.0	ANALYSIS OF THE CULTURE HOUSE							
4.1	THE CULTURE HOUSE COMPETES FOR USERS WITH OTHER FACILITIES IN TOWN	4.1.1	Interview culture house manager on overall operations, use, etc.	0.5		3		
		4.1.2	Interview culture house manager on use, activities, etc.					
		4.1.3	Survey all theaters, etc. owned by Gmina, other employers, etc.					
		4.1.4	Prepare map showing location, with symbols for each type					
		4.1.5	Prepare listing of capacities, limitations on who may use					
4.2	OTHER THEATERS IN TOWN ARE GENERALLY OVER/UNDERUTILIZED	4.2.1	Prepare estimate of "capacity" by facility			1		
		4.2.2	Prepare estimates of actual use in 1991					
		4.2.3	Prepare utilization report					
4.3	COMPANY EMPLOYEES COMPRISED A% OF CULTURE HOUSE USERS IN 1991	4.3.1	Collect and tabulate data on event participants, sponsors, etc. for 1991			2.5		
		4.3.2	Determine need to sample current users for employment					
		4.3.3	Collect sample data, if needed					
		4.3.4	Prepare estimate of Company users, compared to all users					
4.4	IN 1991, CULTURE HOUSE REVENUES COVERED LESS THAN D% OF OPER. COSTS	4.4.1	Sumarize cost data for culture house, by type of activity					
		4.4.2	Prepare report					
4.5	BARRIERS TO DISPOSITION PLANS	4.5.1	Confirm most likely disposition approach(es)	2	0.5	0.5		2.5
		4.5.2	Identify barriers by type of barrier, e.g. legal					
		4.5.3	Identify possible actions to remove, minimize barriers					
		4.5.4	Review possible actions with Company, unions, users, community					
		4.5.5	Revise disposition strategies based on comments					
		4.5.6	Prepare written assessment					
4.6	PROJECTIONS STRATEGIES TO RAISE REVENUES AND REDUCE COSTS; BARRIERS	4.6.1	Identify strategy for each type of revenue and cost	2	2	2.5		2.5
		4.6.2	Quantify potential impact, costs involved to achieve the result					
		4.6.3	Identify barriers to each type of change, e.g. legal, capital requirements					
		4.6.4	Identify possible actions to remove, minimize barriers					
		4.6.5	Review possible actions with Company management, unions, culture house					
		4.6.6	Revise strategies based on comments					
		4.6.7	Prepare written analysis					
		4.6.8						
4.7	HYPOTHETICAL 1991 BREAK EVEN PRO-FORMA	4.7.1	Determine added revenue, reduced costs required for 1991 break-even	0.5	0.5	0.5		
		4.7.2	Assess feasibility of achieving break-even in future year(s)					
		4.7.3	Prepare written analysis					
4.8	FIVE YEAR OPERATING PRO-FORMA	4.8.1	Select assumptions for legal status, ownership, inflation rate, etc.	0.5	1.5			
		4.8.2	Prepare five year pro-forma using assumptions selected					
		4.8.3	Prepare sensitivity analysis for key assumptions					
		4.8.4	Review with Company management (community as appropriate)					
		4.8.5	Select one or more pro-formas for report					
		4.8.6	Complete reports					
Total days				5.5	6.5	13	5	30

EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				Total
NO.	TITLE	TASK NO.	TASK DESCRIPTION	Review Prv. mgr	Assess Staff	Other STAFF	TAX and Legal	
5.0	ANALYSIS OF LEISURE PROPERTIES							
5.1	THE RESORT PROPERTIES AND HOTELS	5.1.1 5.1.2 5.1.3 5.1.4	Interview Company resort property manager on overall operations, use, etc. Collect data on other holiday resorts in areas of Company resorts Prepare map showing location, with symbols for each type Prepare report	0.5		2		
5.2	THE COMPANY PROVIDED VACATION SUBSIDIES FOR A% OF ITS EMPLOYEES IN 1991	5.2.1 5.2.2 5.2.3	Collect and review data on number of employee subsidized vacations Prepare estimates of actual use in 1991 Prepare utilization report					
5.3	COMPANY EMPLOYEES COMPRISED B% OF GUESTS AT HOLIDAY RESORTS IN 1991	5.3.1 5.3.2 5.3.3	Collect and tabulate data on employee usage for each resort in 1991 Prepare estimate of Company users, compared to all users Prepare report			1 1		
5.4	IN 1991, RESORT & HOTEL REVENUES COVERED LESS THAN D% OF OPER. COSTS	5.4.1 5.4.2	Sumarize cost data for each resort, and for the whole Prepare report			0.5		
5.5	BARRIERS TO DISPOSITION PLANS	5.5.1 5.5.2 5.5.3 5.5.4 5.5.5 5.5.6	Confirm most likely disposition approach(es) Identify barriers by type of barrier, e.g. legal Identify possible actions to remove, minimize barriers Review possible asctions with Company, unions, and other users of resorts Revise disposition strategies based on comments Prepare written assessment	0.5	0.5	1.5	2	
B. PROJECTIONS								
5.6	STRATEGIES TO RAISE REVENUES AND REDUCE COSTS; BARRIERS	5.6.1 5.6.2 5.6.3 5.6.4 5.6.5 5.6.6 5.6.7	Identify strategy for each type of revenue and cost Quantify potential impact, costs involved to achieve the result Identify barriers to each type of change, e.g. legal, capital requirement Identify possible actions to remove, minimize barriers Review possible asctions with Company, unions Revise strategies based on comments Prepare written analysis	0.5	0.5	0.5	1	
5.7	HYPOTHETICAL 1991 BREAK EVEN PRO-FORMA	5.7.1 5.7.2 5.7.3	Determine added revenue, reduced ccsts required for 1991 break-even Assess feasibility of achieving break-even in future year(s) Prepare written analysis		0.5	0.5		
5.8	FIVE YEAR OPERATING PRO-FORMA	5.8.1 5.8.2 5.8.3 5.8.4 5.8.5 5.8.6	Select assumptions for legal status, ownership, inflation rate, etc. Prepare five year pro-forma using assumptions selected Prepare sensitivity analysis for key assumptions Review with Company management Select one or more pro-formas for report Complete report	0.5	1		0.5	
			Total days	2	2.5	7	3.5	15
6.0	ANALYSIS OF MUNICIPAL FACILITIES		same general approach as 5.0					
7.0	ANALYSIS OF COMMERCIAL PROPERTIES		same general approach as 5.0					
8.0	ANALYSIS OF OTHER SOCIAL ASSETS		same general approach as 5.0	1	3.5	7	3.5	15
APPENDIX TABLE OF DESCRIPTORS FOR ALL ASSETS IN EACH GROUP								

EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION			PERSON RESPONSIBLE				Total	
NO.	TITLE	TASK NO.	TASK DESCRIPTION	Review Prv. mgr	Assess Staff	Other STAFF		TAX and Legal
C. FINANCING OPTIONS				DAYS	DAYS	DAYS	DAYS	
1.0 HOUSING								
		1.1	Identify financing options	0.5			0.5	
		1.2	Review and select preferred options	0.5				
		1.3	Prepare information memorandum for obtaining financing	1	2		2	
		1.4	Screen potential financing sources	0.5				
		1.5	Approach financing sources	0.5				
		1.6	Review and discuss responses	0.5			0.5	
		1.7	Recommend financing source	0.5			0.5	
2.0 SPORTS FACILITIES								
			Repeat steps 1.1 – 1.7 above	4	2		3.5	
3.0 CULTURE HOUSE								
			Repeat steps 1.1 – 1.7 above	4	2		3.5	
4.0 LEASURE PROPERTIES								
			Repeat steps 1.1 – 1.7 above	4	2		3.5	
5.0 OTHER SOCIAL ASSETS								
			Repeat steps 1.1 – 1.7 above	4	2		3.5	
Total				20	10	17.5	0	47.5

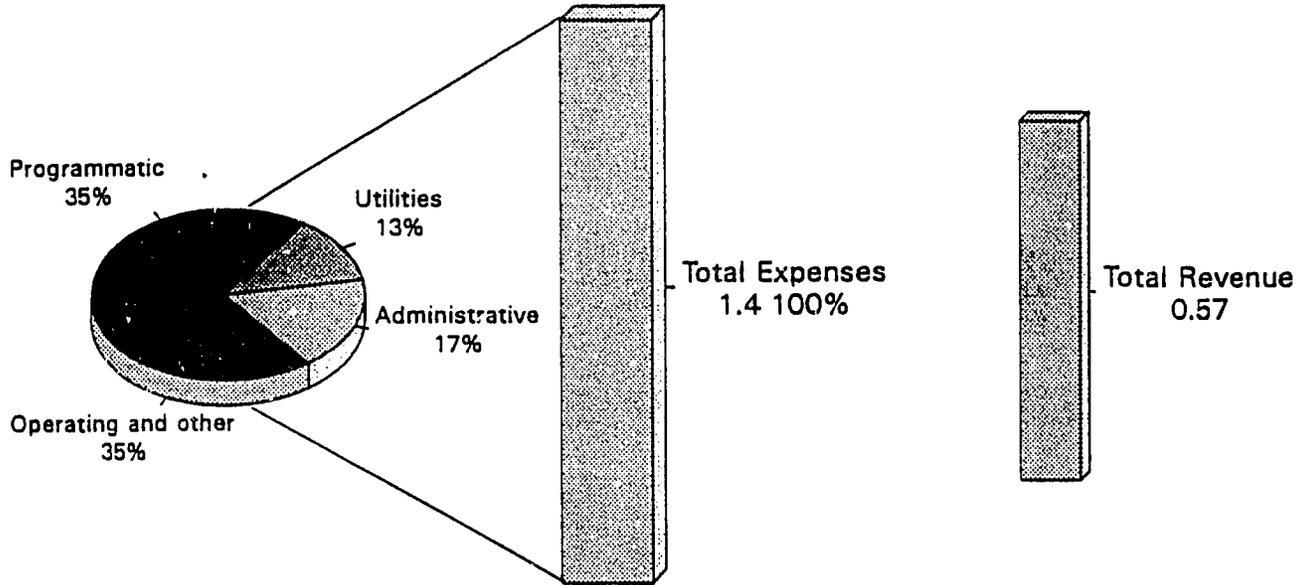
EXAMPLE WORK PLAN
ANALYSIS OF SOCIAL ASSETS

APPENDIX 1

A. ANALYSIS & PROJECTION				PERSON RESPONSIBLE				Total
				Review Prv. mgr	Assess Staff	Other STAFF	TAX and Legal	
NO.	TITLE	TASK NO.	TASK DESCRIPTION	DAYS	DAYS	DAYS	DAYS	Days
D. IMPLEMENTATION PLAN								
1.0	DETAILED IMPLEMENTATION PLAN FOR HOUSING	1.1	Identy and list all steps needed to implement plan for the housing	2	1	2		
		1.2	Estimate costs of each step to Company, users, others					
		1.3	Determine responsibility for each step, e.g. Company, Gmina, Ministries					
		1.4	Prepare detailed implementation plan					
2.0	SPORTS FACILITIES	1.1	Identy and list all steps needed to implement plan for the sports facilities	2	1	2	0.5	
		1.2	Estimate costs of each step to Company, others					
		1.3	Determine responsibility for each step, e.g. Company, Gmina, Ministries					
		1.4	Prepare detailed implementation plan					
3.0	CULTURE HOUSE	1.1	Identy and list all steps needed to implement plan for the culture house	2	1	2	0.5	
		1.2	Estimate costs of each step to Company, others					
		1.3	Determine responsibility for each step, e.g. Company, Gmina, Ministries					
		1.4	Prepare detailed implementation plan					
4.0	LEASURE PROPERTIES	1.1	Identy and list all steps needed to implement plan for the hotels & resorts	2	1	2	0.5	
		1.2	Estimate costs of each step to Company, others					
		1.3	Determine responsibility for each step, e.g. Company, Gmina, Ministries					
		1.4	Prepare detailed implementation plan					
5.0	OTHER SOCIAL ASSETS	1.1	Identy and list all steps needed to implement plan for the other assets	2	1	2	0.5	
		1.2	Estimate costs of each step to Company, others					
		1.3	Determine responsibility for each step, e.g. Company, Gmina, Ministries					
		1.4	Prepare detailed implementation plan					
Total days				10	5	10	2.5	27.5
Total estimated days								251.5

Culture House

Expenses (In Billions of Zloty)



Appendix 2. Analyzing Financial Operations and Preparing Projections

I. Introduction

- II. Financial Analysis
 - A. Revenue Recognition
 - B. Cost Recognition
 - C. Summary
- III. Financial Projections
 - A. Introduction
 - B. Assumption Tables
 - C. Capital Improvements
 - D. Staffing Plan

I. INTRODUCTION:

In order to assess and analyze financial and non-financial matters of a company's social assets, a clear distinction must be made between business related and non-business assets.¹ Before any decisions can be made about the future relationship between the asset and the company, the overall costs of operating and maintaining the social assets, separate from the operating company, must be analyzed. In order to carry out this analysis it will be necessary to set up separate accounting and reporting systems for the asset. These systems must meet two requirements:

- a) those required by Polish tax and accounting laws
- b) providing useful management information.

Exhibit 2-I graphically illustrates the disparity that may exist between asset revenues and expenses. The purpose of this appendix is to provide a basic framework for companies to perform a financial analysis of revenues and expenses and provide useful information to management. It will briefly review some of the techniques necessary to analyze the financial operations of a social asset, distinguish between social asset costs and those costs borne by the company, the cash position of the asset, activities that generate revenues greater than costs, and prepare projections for future operations in order to estimate future subsidy requirements. The company may discover after this analysis, particularly if it decides to keep the asset, that the asset should be viewed as a cost center rather than a profit center.

¹ The following discussion is by necessity written at a very general level. It is intended as a brief overview for readers who are unfamiliar with basic accounting and financial analysis. Readers experienced in financial analysis may want to proceed directly to the examples of financial statements and projections at the end of this appendix.

**ILLUSTRATIVE EXAMPLE
HOUSE OF CULTURE
REVENUES
For the Year Ended 1991**

REVENUES	<u>1991</u>	
<u>Lease Revenue</u>		
Long term lease	12,000,000	
Short term lease	<u>88,000,000</u>	
Total Lease Revenue		100,000,000
<u>Ticket Revenue</u>		
Dance	25,000,000	
Less: employee discount	<u>5,000,000</u>	
Net dance revenue		20,000,000
Theater	20,000,000	
Less: employee discount	<u>3,000,000</u>	
Net theater revenue		17,000,000
Movies	15,000,000	
Less: employee discount	<u>1,000,000</u>	
Net movie revenue		14,000,000
Total Ticket Revenue		51,000,000
<u>Course Revenue</u>		
English	200,000,000	
Computer	<u>220,000,000</u>	
Total Course Revenue		<u>420,000,000</u>
TOTAL REVENUE		<u>571,000,000</u>

ASSUMPTIONS

Total cash received for the year = 603,000,000
 Long term lease payment of 24,000,000 for 1 year on July 1, 1990
 Computer courses last 3 months with final ending in January 1991,
 amount earned per quarter = 60,000,000
 Employee discounts of 20% per ticket

Reconciliation from Accrual to Cash:

This example demonstrates how accrual revenue (earned) may be different from actual cash receipts.

Accrual Revenue		571,000,000
Plus: lease revenue paid up front	12,000,000	
Plus: computer course revenue paid up front	20,000,000	
Total Cash Received		603,000,000

For many state enterprises, social asset costs and revenues are often included, without clear delineation, within the operating records of company. If a useful analysis of asset operations is to be performed, it is imperative that costs and revenues be separated between the different types of social assets (non-business related) and company operations (business related). By separating individual asset revenues and costs, information can be discerned such as:

- o Whether the social assets have a material effect on the company's consolidated balance sheet. In some instances twenty percent or more of the company's fixed assets have fallen into the category of social assets.
- o How large a subsidy is required by the asset and whether it is of a material amount that could affect overall company operations.
- o Whether the company would realize decreased losses or increased gains by removing the social assets from the company's Profit and Loss Statement.
- o Whether management is meeting goals set for the asset in a profitable or cost efficient manner.

II. FINANCIAL ANALYSIS

A. Revenue Recognition

In the past, revenues and costs have not been allocated clearly to the activity which incurred the revenue or expense. As the divestiture process begins, a true picture of the asset must be formulated about the actual revenue potential of the asset. In order to properly account for revenue, the following steps are necessary:

- o Revenues should be recorded and accounted for on both a cash and accrual basis.
- o Revenues should be recorded and accounted for based on the separate activity that generated the revenue in order to recognize where revenue was earned.
- o Gross revenue should be shown, then discounts to employees as a reduction of gross revenue and then net revenue.

Exhibit 2-II-A provides an example of a culture house to demonstrate the benefits of accounting on both an accrual and cash basis with revenue categories separated.

The example illustrates the difference between revenue recognized (earned) and actual cash received, which stems from the timing of payments. By distinguishing between and reconciling revenue earned and cash received:

- o a cash flow statement can be prepared. This statement will allow management to evaluate whether asset activities are providing sufficient cash to pay operating expenses when those expenses come due. It will also help

**ILLUSTRATIVE EXAMPLE
HOUSE OF CULTURE
EXPENSES
For the Year Ended 1991**

COSTS AND EXPENSES	<u>1991</u>	
<u>Administrative</u>		
Salaries	150,000,000	
Supplies and equipment purchases	40,000,000	
Telephone	15,000,000	
Overhead	<u>30,000,000</u>	
Total administration		235,000,000
<u>Programmatic costs</u>		
Performances	85,000,000	
Movies	15,000,000	
Courses	<u>375,000,000</u>	
Total programmatic		475,000,000
<u>Utility expenses</u>		
Water	75,000,000	
Central heat	50,000,000	
Electricity	<u>45,000,000</u>	
Total utilities		170,000,000
<u>Maintenance and other operating expenses</u>		
Salaries – operating	80,000,000	
Salaries – maintenance	65,000,000	
Library expenses	10,000,000	
Depreciation expense	55,000,000	
Maintenance costs	90,000,000	
Other operating costs	<u>170,000,000</u>	
Total operating and maintenance costs		470,000,000
Total Costs and Expenses		1,350,000,000
Taxes		
Insurance	45,000,000	
	<u>8,000,000</u>	
Total Taxes and Insurance Expenses		53,000,000
Net Income/(Loss)		<u>(832,000,000)</u>

NOTE:

This schedule is intended to focus on cash and current expenditures and does not include amortization of capital expenditures.

Net Income = Revenues, 571 – Costs, 1,350 – Taxes & Insurance, 53 = (832)

management determine the timing of subsidy transfers to coincide with greatest cash demands.

- o a profitability analysis can be performed. The analysis will involve matching revenue generated with expenses and will allow management to analyze what activities are profitable.

B. Cost Recognition

Costs are accounted for in the same manner as revenues. However, experience with social assets indicates that this task will be much more difficult. Costs (maintenance, administration) may not have been recorded under the asset receiving the benefit, but accounted for in the general ledger for company business operations or under one particular asset. The lack of such cost identification makes it more difficult to accurately account for the true expenses to operate the asset and consequently produce a realistic picture of the profitability of asset activities and overall asset operations. Exhibit 2-II-B is an example of cost recognition.

Although most of the costs discussed below, should be included under operating costs, they have been divided as follows for discussion purposes: administration, programmatic, operating, maintenance and remodelling, utilities, and capital improvements. The goal is to identify all costs associated with a particular asset in order to calculate the required revenues or subsidy to support asset operations.

1. Administration Costs

Administration costs can be defined as the following general categories: 1) payroll, 2) supplies, telephone, etc.; and 3) allocation of overhead administration costs. Payroll and supplies should be recognized as incurred. Administrative overhead expenses are the costs in managing the business. They are incurred but do not have a direct relationship to the product or service and include such costs as the company accounting department, directors of social assets, and any other administration cost not directly affecting an individual social asset. It is important that these overhead costs are allocated among the individual social assets since, though not directly related to specific asset operations, are necessary for overall asset administration.

Generally, overhead administration costs can be allocated as a percentage of each social asset's total costs to the total cost of all social assets. For example, if the Culture House encompasses 10% of all social asset costs, it could be allocated 10% of overhead administration costs. Each company, however, should decide for itself whether such an allocation makes sense for their specific situation. The company's chief accountant is in the best position to contribute to this decision and to indicate how these costs should be allocated.

This example, illustrates how certain activities can dramatically alter the subsidy requirements of a social asset, thereby helping determine the level of company support. In the example, the company sponsors two activities at the sports facilities which incur costs significantly higher than the revenues they generate. Even though a user survey revealed that these activities were very popular, the cost of continuing them is much higher than any possible increases in ticket revenue the sports facilities could hope to achieve. If the company decides to continue these activities it would have to contribute a subsidy of over 5 billion zloty. On the other hand, should the company decide to discontinue these activities, the sports facilities could come close to breaking even, and require a subsidy of only 700 million zloty to continue all other activities.

**ILLUSTRATIVE EXAMPLE
SPORTS FACILITIES
PROFIT AND LOSS STATEMENT**

(in zl mlns)

Total Revenue		3,810
Less: Activity A	2,100	
Activity B	400	
	1,310	
Total Costs and Expenses		9,032
Less: Activity A	5,405	
Activity B	1,610	
Net Costs and Expenses		2,017
Total Deficit		(5,222)
Less: Activity A	(3,305)	
Activity B	(1,210)	
NET DEFICIT		(707)

2. Programmatic Costs

Programmatic costs are defined as all costs associated with the nature of the business. For example, for the culture house, these costs would include the personnel, theatrical directors and performers, course instructors, musicians, stage hands, etc. In addition, any special equipment needed for production, lighting, software packages, instruments, and so on. The purpose of this category is to match the cost of providing a specific activity with the revenue generated from that activity. Programmatic costs should be broken out by the same categories as sources of revenue generation (i.e. film revenue --> film costs).

Recognizing programmatic costs with their associated activities will allow management to determine the contribution each activity provides toward conducting the activity and overall asset operations. For example, Exhibit 2-II-B-2 shows a profit and loss statement at a sports club. The revenues from Activity A and Activity B not only failed to cover costs, but the costs were so great that if they were removed, the overall facility operated at near break-even level. From this example it is evident that large revenues do not necessarily mean large profits. Both revenues and expenses must be gathered and reported in ways that give an accurate picture of the status of the asset. It is vital that the financial results of all activities are summarized in a manner that allows analysis to be performed and decisions made on which activities are covering their programmatic costs and which are not.

By determining and analyzing the profitability of individual activities in addition to the overall asset, information is available to make decisions such as:

- o whether to continue or discontinue an activity;
- o whether to increase an activity;
- o how an increase in ticket price might effect the activity.

By finding those activities that cover fixed costs, a "break-even" point will be determined from which further operating decisions can be made.

3. Operating Costs

Operating costs are defined as all day to day costs that are necessary to keep the social asset in business, excluding programmatic costs. Utility costs are considered operating costs, but will be discussed separately.

Operating costs will have the most allocations and estimates of allocations. In many companies these costs were either not accounted for or were accounted for in company business related operations. All operating costs associated with a social asset should be accounted for by that asset regardless of whether the operating company, the asset or an outside vendor provided them.

**COST CATEGORIES
ILLUSTRATIVE LIST
FOR CULTURE HOUSE**

REVENUES:

Long term lease revenue
Short term leases
Ticket sales broken out by performance
Movie revenue
Course revenue by type
Interest income
Canteen revenue
Other revenue

ADMINISTRATION:

Salaries
Supplies
Telephone
Overhead

PROGRAMMATIC:

Salaries of performers
Salaries of directors
Salaries of stage -- hands
Salaries of projectioneers
Salaries of instructors -- courses
Special equipment purchases/ by performance
Course materials
Stage preparation
Rental of movies
Transport
Library purchases

OPERATING :

Salaries of jainitors
Salaries operating
Cleaning supplies
Transport
Waste disposal
Lawn care/snow removal
Specific services contracted out
Security

MAINTENANCE:

Contracted work
Salaries electricians/ other categories
Electrical repair
Painting
Plumbing
Heating repair
Roof repair
Repair stage and floors and main hall
Miscellaneous repair
Window repair

UTILITIES:

Gas
Heat
Water
Electricity

TAXES AND INSURANCE:

Property taxes
Hazard insurance
Payroll taxes
Other taxes

**CAPITAL IMPROVEMENTS
AND EXPENDITURES:**

See Appendix 5, housing example

Operating costs should be broken out by function. For example, janitorial expenses should be broken out by payroll, supplies, equipment, and contract fees.

It is recommended that the following guidelines be used when identifying operating costs:

- o Identify the typical accounts where operating and other cost may be charged.
- o Prepare a list of major cost categories to which each cost will be allocated. A list of such categories is presented on in Exhibit 2-II-B-3.

By recognizing and accounting for costs by categories, operating costs can be easily identified and analyzed as to their affect on profitability.

4. Utilities

Utilities should be recorded and accounted for by type of service, i.e. water, electricity, heat, etc. In many cases it will be necessary to estimate actual use of a utility service since many companies lack metering that measures usage on a per facility or unit basis. For example, in an apartment building, the company may know how much water was used by the building, but not how much was used by each individual apartment.

5. Maintenance and Remodelling

It is assumed that most state enterprises account for repairs and remodelling under two general categories: in-house and contracted out. An exception is capital improvements which should be accounted for separately. Capital improvements are those items that can be capitalized rather than expensed. A separate schedule should show these items with time frames for completion. The example in Appendix 4 gives an example of a budget for a five year refurbishing plan. It is important to distinguish between repairs which are amortized over time, such as major refurbishments, and those which are expensed in the current period.

6. Taxes and Insurance

In order to determine the true cash flow and profit from operations, taxes and insurance costs must be included. Both of these are a direct expense to the social asset. For taxes, standard rates are applied to certain buildings and other fixed assets. The accounting department must be consulted to identify all the tax regulations that apply.

Insurance needs must also be accounted for. Insurance should not only cover the buildings and fixed assets, but also transportation vehicles and the like. Each company will be different in regard to its insurance needs.

Taxes and insurance are subtracted from operating profit or loss to get net income. These two items are not viewed as part of the company activities and thus are disclosed separately.

C. Summary

By following the above suggestions and examples, management should get an accurate picture of revenue generated and costs incurred to generate that revenue. Such information will be useful in determining the future relationship between the company and the asset and what future subsidy requirements might be. In addition, it will help asset management assess the specific activities of their asset, determine what activities are profitable and which are not, find a base break-even level of operations, and begin planning for future activities.

HOUSING PROJECTIONS
 ASSUMPTION TABLE
 Distribution of Housing

1992 1993 1994 1995 1996 1997 1998

Line DISTRIBUTION OF HOUSING AND SQUARE METERS

Number

1	Number of original housing units	2,000	2,000	2,000	2,000	2,000	2,000	2,000
2	Total square meters of original units	100,000	100,000	100,000	100,000	100,000	100,000	100,000
3	Annual percentage of units sold	0%	20%	10%	10%	10%	10%	10%
4	Cumulative percentage of units sold	0%	20%	28%	35%	42%	48%	53%
5	Number of remaining units	2,000	1,600	1,440	1,296	1,166	1,049	944
6	Number of current square meters	100,000	80,000	72,000	64,800	58,300	52,500	47,250
7	Annual number of units sold	0	400	160	144	130	117	105
8	Cumulative number of units sold	0	400	560	704	834	951	1,056

III. FINANCIAL PROJECTIONS

A. Introduction.

The forecast is designed so that all revenues are derived from the number of housing units the company owns and sells. The assumption tables are divided into monetary and non-monetary categories. All assumptions are made with the participation of company and asset management. It is impossible to make realistic assumptions without the participation of those actively involved in the day-to-day management of the asset as well as those who will make overall decisions about the future of the asset. The discussion below and the examples that follow assume an analysis of company owned housing. Similar analyses would be carried out for all other social assets.

The forecast is derived from three assumption tables. The first table presents a quantitative distribution of housing sales and rental units over the next five years. The second table shows the revenues generated from both rentals and sales. The third table presents the housing related costs.

Preparing a forecast will help produce:

- o a budget for capital improvements, maintenance and operating expenses, of remaining housing units that are not sold;
- o an analysis of potential cash flow from sales;
- o an analysis of cash flow needed to cover capital improvements or cross subsidization to other social assets.

At the end of this discussion is an example of a five year forecast for housing which is based on the assumption tables presented on the following pages.

B. Assumption Tables

1. Assumption Table for the Distribution of Housing (Exhibit 2-III-B-1)

Line 1 & 2: Line one indicates initial total housing units the company originally owns. Line 2 is total square meters for all housing. These line items are held constant throughout the forecast period since the number of units and space does not change regardless of ownership.

Line 3 & 4: It is assumed that 20% of housing will be sold in the first year of the sales program, and 10% each additional year. Line 4 is the cumulative percentage of the annual sales percentage; 1998 reflects the sum of the annual percentages from 1993 through 1998.

Information to consider when estimating the sales percentage:

- o attitude of tenants toward home ownership;
- o responses from tenants to the offer;

HOUSING PROJECTIONS
 ASSUMPTION TABLES
 Sales Forecasts

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Line SALES FORECASTS							
Number							
7 Annual number of units sold	0	400	160	144	130	117	105
9 Annual percentage sold for cash	0	20.0%	10.0%	10.0%	10.0%	10.0%	10.0%
10 Annual percentage sold on credit	0	80.0%	90.0%	90.0%	90.0%	90.0%	90.0%
11 Number of units sold cash	0	80	16	14	13	12	11
12 Number of units sold credit	0	320	144	130	117	105	95
13 Cumulative number of units sold cash	0	80	96	110	123	135	145
14 Cumulative number of units sold credit	0	320	464	594	711	816	911

- o selling price of the units - below market value, market value, above market value;
- o condition of the units (need for improvements and how this affects tenant responses);
- o current rental payment in relation to mortgage payment.

Line 6 & 7: These lines calculate the previous assumptions. Thus, line 7, in 1993 is 20 percent sales times 2,000 units. The next year, 1994, is 10% sales times the remaining 1,600 housing units, and so forth. Line 6 is the sum of all the units sold.

Care must be taken when estimating the sales assumptions. Even small variations can cause a significant change to cash flow. Tests should be done on the model to see how sensitive it is to changes in assumptions. By testing different assumptions various scenarios can be considered. Once sales assumptions are determined, it must be broken down into: a) cash sales; and b) credit sales.

Line 8: This line shows the cumulative number of units sold.

2. Assumption Table for Sales Forecasts (Exhibit 2-III-B-2)

The example assumes a decrease in cash sales over time. It assumes that tenants who have the money for a cash purchase will purchase their unit early. The example assumes credit sales will be the highest in the first year of sales. That assumption could be management based, or based on the overall housing market in the city.

Line 9 -14: The sales percentages for both cash and credit are multiplied by the total housing units sold (Line 7) to calculate the proportion of cash and credit sales. Lines 13 and 14 give us the cumulative effect of these sales.

It should be noted that this example is intended as a general model for sales forecasting. More detail will have to be added to address a company's specific needs. For example:

- o the model assumes all housing units are similar (same size, same layout, etc.) Specific companies may have a far greater variation in quality and size of housing units;
- o different categories of housing may have different sales assumptions;
- o company information along with the responses to sales offers should reveal where sales will come from. For example:
 - a. condition of individual units and infrastructure of the overall building will determine the attractiveness of a particular building;

EXHIBIT 2 - III - B - 3

HOUSING PROJECTIONS
ASSUMPTION TABLES
Revenue Projections

Line Number	REVENUES - RENTAL	1992	1993	1994	1995	1996	1997	1998
6	Average number of rental sqm per year	100,000	90,000	76,000	68,400	61,550	55,400	49,875
15	Rental revenue per square meter/ per month	1,500	2,500	2,500	2,500	2,500	2,500	2,500
16	Rental revenue growth rate	0	67.0%	1.00	1.00	1.00	1.00	1.00
17	Bad Debt Percentage	5.0%	5.0%	5.0%	5.5%	6.0%	6.5%	7.0%
18	Average rental revenue per month	142,500,000	213,750,000	180,500,000	161,595,000	144,642,500	129,497,500	115,959,375

REVENUES - CASH SALES

11	Number of units sold cash	0	80	16	14	13	12	11
19	Purchase price	0	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000	50,000,000
20	Cash discount rate	0.0%	15.0%	15.0%	15.0%	15.0%	15.0%	15.0%
21	Amount received per cash sale	0	42,500,000	42,500,000	42,500,000	42,500,000	42,500,000	42,500,000
22	Cash sales revenue per year	0	3,400,000,000	680,000,000	595,000,000	552,500,000	510,000,000	467,500,000

REVENUES - CREDIT SALES

12	Number of units sold credit	0	320	144	130	117	105	95
14	Cumulative number of units sold, credit	0	320	464	594	711	816	911
23	Average monthly installment payments	0	187,500	187,500	187,500	187,500	187,500	187,500
24	Average number of installment pmts/yr	0	3	6	6	6	6	6
25	Down payment rate	0.0%	10.0%	10.0%	10.0%	10.0%	10.0%	10.0%
26	Inflation rate		1.0	1.0	1.0	1.0	1.0	1.0
27	Average monthly downpayment revenue	0	266,666,567	60,000,000	54,000,000	48,750,000	43,875,000	39,583,333
28	Average credit sales revenue per month		30,000,000	73,500,000	99,150,000	122,268,750	143,109,375	161,887,500

- b. the size of units will also determine attractiveness (two bedroom apartments will likely sell faster than studios);
- c. large apartment buildings will be more difficult to divest or privatize than smaller buildings with fewer units in them.

3. Assumption Table for the Calculation of Revenues (Exhibit 2-III-B-3)

Amount of revenues and cash flows will be in three forms: 1) rental revenue; 2) mortgage payments; and 3) cash purchases. The forecast is broken down into these categories.

a. Rental Revenue

Line 15 & 16: Rental charge is calculated on a per square meter basis. Monthly rental revenue is line 6 times line 15. Line 6 is used because rental income no longer applies to the units that were sold. In the assumptions, there is no increase in rental charges over the years. This assumption was made as an initial "base case" scenario. As rental rates change according to rent control these figures can be updated. In addition, it is difficult to estimate what inflation will be, thus it is assumed to be zero.

b. Cash Sales

Line 19 - 22: Cash sales are forecasted differently than credit sales, since they only apply to the period when sold. In the example, a 15% cash discount was provided to encourage residents to buy their unit for cash. The revenue generated from a cash sale is the total number of housing units available (Line 6), by the percentage assumed to be sold for cash (Line 11).

c. Credit Sales

Credit sales are broken into two categories: 1) the actual monthly mortgage payment (it is assumed that the company is self-financing the mortgages); and 2) the initial down payment amount.

Line 23 & 24: The monthly loan payment is determined from the contract between the tenant and company or mortgage lender.² Based on the assumptions outlined below, the example computes a monthly repayment of 187,500 zloty per month. The factors considered when determining the loan rate include:

² In some cases, residents may not be able to qualify for a loan from a bank to purchase their apartment. In such instances, the company could self-finance the loan under generous terms so that the resident could afford the purchase. If the company lacked the resources for such self-financing, it could act as guarantor of the loan, on behalf of the resident, with the bank. Other arrangements might also be considered between resident, bank, and company, to help the resident qualify for the loan.

EXHIBIT 2-III-B-4

**HOUSING PROJECTIONS
ASSUMPTION TABLES
Cost Projections**

COSTS AND EXPENSES

1992 1993 1994 1995 1996 1997 1998

Line ADMINISTRATION

Number								
29	Number of personnel	6	7	7	7	7	7	7
30	Average monthly salary	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
31	Social contribution	47.0%	47.0%	47.0%	47.0%	47.0%	47.0%	47.0%
32	Monthly material purchases	17,400,000	21,750,000	21,750,000	21,750,000	21,750,000	21,750,000	21,750,000
33	Monthly telephone expense	725,000	725,000	725,000	725,000	725,000	725,000	725,000
34	Number of square meters -- office space	0	70	70	70	70	70	70
35	Rental charge per square meter -- office space	0	30,000	30,000	30,000	30,000	30,000	30,000

UTILITY ASSUMPTIONS

36	Number of tenants	6,000	6,000	6,000	6,000	6,000	6,000	6,000
37	Water revenue per tenant/month	7,500	12,750	12,750	12,750	12,750	12,750	12,750
38	Central heat revenue per sq meter/ month	1,100	4,500	4,500	4,500	4,500	4,500	4,500
39	Common area lighting/square meter	500	500	500	500	500	500	500

MAINTENANCE AND OTHER OPERATING COSTS

40	Number of janitors	6	6	4	4	4	4	4
41	Average monthly salary	2,300,000	2,300,000	2,300,000	2,300,000	2,300,000	2,300,000	2,300,000
42	Number of engineers	10	10	11	11	11	11	11
43	Average monthly salary	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000	2,800,000
44	Waste disposal cost per apartment	18,000	18,000	18,000	18,000	18,000	18,000	18,000
45	Cleaning costs per square meter	7,000	8,000	8,000	8,000	8,000	8,000	8,000
46	Operating costs per square meter/year	8,000	8,000	8,000	8,000	8,000	8,000	8,000
47	Maintenance costs per square meter/year	6,000	6,000	6,000	6,000	6,000	6,000	6,000
48	Warehouse rental square meters	0	20	20	20	20	20	20
49	Rental charge per square meter -- warehouse	0	30,000	30,000	30,000	30,000	30,000	30,000

OTHER COSTS

50	Taxes -- per square meter/year	1,147	1,147	1,147	1,147	1,147	1,147	1,147
52	Insurance -- per square meter/year	880	880	880	880	880	880	880

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- o The pilot company who allowed us to review all of the data on and operation of their social assets in order better understand the issue, and in the process provide them with some ideas that should contribute to the success of their own social asset divestiture plans.
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This Guidebook is dedicated to all of the companies in Poland with social assets.

- o interest rate. In the example the rate is at zero percent interest to encourage sales. However, payments should be revalued periodically for inflation. This is not reflected in the model because of the zero inflation assumption:
- o payment schedule. The example uses a 20 year mortgage;
- o amount of required down payment. The example uses a 10% downpayment. Thus, the monthly mortgage payment is based on a loan of 45 million zlotys.

The total monthly mortgage payments are calculated on how many units are assumed sold each month (line 12). Multiplying the number of units sold by the monthly mortgage gives total mortgage revenue for one month. To get annual mortgage revenue it is necessary to decide how many months over the year each unit, on average, will have a mortgage payment. For simplicity, it was assumed that new units would sell equally over the course of a year (Line 22). Therefore, it is assumed that mortgage payments for those units are received, on average, six months of the year for all units. This number is added to the previous years mortgage payments to arrive at the cumulative total for the year.

Line 25: The second category of credit sales is the initial down payment. The model assumes 10 percent. This percentage is multiplied by the number of housing units sold on credit (Line 12) and the purchase price (Line 19) to determine revenue. Note that this down payment only applies once, when a unit is sold.

Line 26: Assumes an inflation rate of zero.

4. Assumption Tables Costs (Exhibit 2-III-B-4)

A general approach of forecasting costs can be applied for all the various cost categories. The starting point is a staffing plan, an example of which is at the end of this section. In terms of salaries for the cash flow forecast, the excess wage and social security benefits should be included.

a. Administration Costs

Line 29 - 35: Most of the forecasting of administration costs will come from the staffing plan. Telephone and supplies should be based on past history. Administration directors should determine an appropriate figure giving the staffing level and housing units of the company.

One category which a company should consider including in administration costs is office rental expense. If the housing department is to be truly segregated from the company, this needs to be considered and forecasted. Office space size will be dictated from the optimal staffing plan, in terms of square meters.

b. Maintenance and Other Operating Costs

Line 40 - 49: Operating costs may have three effects on the company depending

on what type of offer is accepted by the tenants and its sales success. Operating and maintenance costs will either be the direct responsibility of the company (bearing all costs), or responsibility of the company with a charge to the tenants or tenant responsibility. This is an issue that must be decided by the company with input from residents or the unions. The forecast presented assumes that the operating and maintenance costs will be the responsibility of the company.

In the example the costs remain the same from year to year. This is because the costs were calculated on a square meter basis, using 1992 as the base year and since the company is covering all costs, the amount will not change. The following should apply when coming up with a forecast for operating and maintenance costs:

- o operating and maintenance costs should be forecasted as an amount that will provide proper upkeep of the buildings;
- o operating and maintenance costs should be broken out by major activity. Refer to Appendix 4;
- o if an activity is to be discontinued in the future it should be represented as such in the forecast.

The key to forecasting these costs is to apply a non-dependant variable to the costs. Square meters is recommended, but may not always apply. Thus, using other factors, such as tenant count or number of buildings, will make these projections much easier.

C. Capital Improvements

The capital improvements forecast can be divided into two categories: a) repairs expenditures and b) capita improvements. Both of these schedules must come from the housing department. A sample of one is provided in Appendix 4.

Repair expenditures can be viewed as necessary purchases. These purchases can range from administration to operating activities. They are not classified as improvements because they will not add additional value to the housing units themselves. An example is the purchase of computers.

Capital improvements on the other hand are the repairs and purchases necessary to bring the condition of the buildings up to standard. Any forecast should include capital improvements and expenditures.

EXHIBIT 2-III-B

HOUSING PROJECTIONS
OPERATING STATEMENT

REVENUE	1992	1993	1994	1995	1996	1997	1998
Gross base rent	1,800,000,000	2,700,000,000	2,280,000,000	2,052,000,000	1,846,500,000	1,662,000,000	1,496,250,000
Less: Bad debt expense	0	<u>135,000,000</u>	<u>114,000,000</u>	<u>112,860,000</u>	<u>110,790,000</u>	<u>108,030,000</u>	<u>104,737,500</u>
Total Rental Revenue	1,800,000,000	2,565,000,000	2,166,000,000	1,939,140,000	1,735,710,000	1,553,970,000	1,391,512,500
<u>Utilities Revenue</u>							
Water	540,000,000	918,000,000	918,000,000	918,000,000	918,000,000	918,000,000	918,000,000
Central Heat	<u>1,320,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>
Total Utilities	1,860,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000
Total Housing Revenue	3,660,000,000	8,883,000,000	8,484,000,000	8,257,140,000	8,053,710,000	7,871,970,000	7,709,512,500
<u>COSTS AND EXPENSES</u>							
<u>Administration</u>							
Salaries	296,352,000	345,744,000	345,744,000	345,744,000	345,744,000	345,744,000	345,744,000
Supplies	17,400,000	21,750,000	21,750,000	21,750,000	21,750,000	21,750,000	21,750,000
Telephone	8,700,000	8,700,000	8,700,000	8,700,000	8,700,000	8,700,000	8,700,000
Office space rental	0	<u>25,200,000</u>	<u>25,200,000</u>	<u>25,200,000</u>	<u>25,200,000</u>	<u>25,200,000</u>	<u>25,200,000</u>
Total Administration	322,452,000	401,394,000	401,394,000	401,394,000	401,394,000	401,394,000	401,394,000
<u>Utility Costs</u>							
Water	540,000,000	918,000,000	918,000,000	918,000,000	918,000,000	918,000,000	918,000,000
Central Heat	<u>1,320,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>	<u>5,400,000,000</u>
Total Utilities	1,860,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000
<u>Other Operating Costs</u>							
Garbage disposal	432,000,000	432,000,000	432,000,000	432,000,000	432,000,000	432,000,000	432,000,000
Cleaning	168,000,000	192,000,000	192,000,000	192,000,000	192,000,000	192,000,000	192,000,000
Ware house space rental	0	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000	7,200,000
Other operating	<u>800,000,000</u>						
Total Operating Costs	1,400,000,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000
Maintenance	4,310,586,000	2,314,066,000	1,522,066,000	1,522,066,000	1,522,066,000	1,522,066,000	1,522,066,000
Repair expenditures	0	0	3,770,750,000	3,267,000,000	0	168,750,000	0
Total Costs and Expenses	7,893,038,000	10,464,660,000	13,443,410,000	12,939,660,000	9,672,660,000	9,841,410,000	9,672,660,000
Taxes	114,700,000	103,230,000	87,172,000	78,454,800	70,597,850	63,543,800	57,206,625
Insurance	88,000,000	79,200,000	66,880,000	60,192,000	54,164,000	48,752,000	43,890,000
SURPLUS/(DEFICIT)	(4,435,738,000)	(1,764,090,000)	(5,113,462,000)	(4,821,166,800)	(1,743,711,850)	(2,081,735,800)	(2,064,244,125)

EXHIBIT 2-III-B

HOUSING PROJECTIONS
CASH FLOW STATEMENT
Housing Sales and Operations

	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Cash Inflow							
Cash Sale	0	3,400,000,000	680,000,000	595,000,000	552,500,000	510,000,000	467,500,000
Downpayment – Installments (10%)	0	1,600,000,000	720,000,000	648,000,000	585,000,000	526,500,000	475,000,000
Installment payments	0	180,000,000	882,000,000	1,189,800,000	1,467,225,000	1,717,312,500	1,942,650,000
Total Installment Revenue	0	1,780,000,000	1,602,000,000	1,837,800,000	2,052,225,000	2,243,812,500	2,417,650,000
Total Rental Revenue	1,800,000,000	2,565,000,000	2,166,000,000	1,939,140,000	1,735,710,000	1,553,970,000	1,391,512,500
Total Cash In-flow From Housing	1,800,000,000	7,745,000,000	4,448,000,000	4,371,940,000	4,340,435,000	4,307,782,500	4,276,662,500
Cash Outflow							
Administration	322,452,000	401,394,000	401,394,000	401,394,000	401,394,000	401,394,000	401,394,000
Utilities	1,860,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000	6,318,000,000
Operating	1,400,000,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000	1,431,200,000
Maintenance and Remodeling	4,310,586,000	2,314,066,000	1,522,066,000	1,522,066,000	1,522,066,000	1,522,066,000	1,522,066,000
Capital Expenditures	0	0	3,770,750,000	3,267,000,000	0	168,750,000	0
Total Cash Outflows	7,893,038,000	10,464,660,000	13,443,410,000	12,939,660,000	9,672,660,000	9,841,410,000	9,672,660,000
Net Cash Flow From Housing	(6,093,038,000)	(2,719,660,000)	(8,995,410,000)	(8,567,720,000)	(5,332,225,000)	(5,533,627,500)	(5,395,997,500)

D. Staffing Plan

The staffing plan is the starting point in determining any type of budget or forecast. It provides a picture of what individual departments look like. On the pages following the projections is an example of how a staffing plan might look. The example is divided into three sections: current personnel, non-personnel expenses, and future staff. It is important to note that all staff should be included from directors to secretaries to cleaning staff. Part time employees should be categorized separately from full time employees.

COMPANY	
RESTRUCTURING OF SOCIAL ASSETS	
TABLE OF ASSET MANAGEMENT FUNCTIONS AND STAFFING LEVELS	
ASSET TYPE	HOUSING
NUMBER OF UNITS	

MISSION STATEMENT	
--------------------------	--

COSTS

ACTIVITY	FUNCTIONS PERFORMED	PERSONNEL EXPENSES				NON-PERSONNEL EXPENSES		RENT	
		No.	Position	Salary	Total Cost	Description	Total Cost	SQ. METER	
								No.	COST
ADMINISTRATION	Property Oversight								
	Budgeting								
	Monitoring Financial Performance								
	Approval of Disbursements								
	Monitoring Collections								
	Hiring Staff								
	Develop Management Plans								
	Phone								
Rent									
Supplies									
Computer									
Overhead									
TOTAL	Total Administration								
ACCOUNTING AND FINANCIAL REPORTS	Accounts Payable								
	Accounts Receivable								
	Cash Management								
	General Ledger								
	Statement Preparation								
	Tax Filings								
	Payroll								
TOTAL	Total Accounting								
ON-SITE MANAGEMENT	Leasing and Occupancy								
	Collection of Rent								
	Supervision of Maintenance and Cleaning Staff								
	Reporting to Admin Office								
	Ordering and Receiving Supplies								
	Order for Repairs								
TOTAL	Total On-Site Management								

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COMPANY
RESTRUCTURING OF SOCIAL ASSETS
TABLE OF ASSET MANAGEMENT FUNCTIONS AND STAFFING LEVELS

ASSET TYPE	HOUSING				
NUMBER OF UNITS					

MISSION STATEMENT

COSTS

ACTIVITY	FUNCTIONS PERFORMED	PERSONNEL EXPENSES				NON-PERSONNEL EXPENSES		RENT	
		No	Position	Salary	Total Cost	Description	Total Cost	SQ. METER	
								No.	COST
OPERATIONS	Cleaning of Halls and Outside Common Areas Extermination of Pests Trash Hauling and Disposal Grass Mowing and Landscape Snow Removal Transport Material Purchases Other								
TOTAL	Total Operating Expenses								
MAINTENANCE AND REPAIR	Maintenance of Building Systems - Boilers and Radiators - Electrical System - Roofs and Windows - Exterior Doors - Common Area Floors and Walls (includes periodic painting)								
	Maintenance in Units - Water Heaters - Stoves - Plumbing Lines and Fixtures - Doors, Floors and Windows - Electrical Service and Fixtures - Painting at Turnover - Glazing (broken windows)								
TOTAL	Total maintenance and Repair								
UTILITIES	Water Central Heating Electricity								
TOTAL	Total Utilities								

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Appendix 3. Analyze the Market Users

In order to assess the amount of future subsidy required for operation of the social assets and to justify disposing of (or maintaining) the assets, it is necessary to determine who the users of the social assets are, the level of use, user attitudes, and ranking of the assets according to importance among users.

Many initial steps to understand the attitudes and anxieties of the employees about social asset divestiture can be taken by company management. However, as discussed in Appendix 3A, if the company is to perform an in-depth analysis, and is to have confidence that user attitudes are representative, it is recommended that a professional market research firm be retained.

Step 1: Identify the Users of Social Assets and User Attitudes: Are the users primarily interested in events offered by the asset or services provided (for example attending a football match versus using the swimming pool)? How sensitive are the users to price changes? Should there be admission charges? How much would usage drop if prices increased? Is there competition from other similar assets in the community? In order to answer these questions, users of the asset must first be identified.

Users can be separated into three categories:

- a. the enterprise, which may use the asset for company events or other purposes,
- b. employees, who use the asset for personal reasons,
- c. the broader community, which can be divided into non-employee individuals, and members of the local government and other organizations. Non-employees use the asset for similar personal reasons as employees. The local organizations may use the asset for community sponsored functions, such as a market.

User attitudes are relevant to a company's decision about the future of its social assets because any decision taken will affect those users. Therefore, part of identifying user attitudes is determining: (1) who benefits from the asset; (2) how much benefit is provided by the asset; (3) the appropriateness of the company providing the asset; (4) possible options for the asset (for example, if the asset is heavily used by local organizations, transferring it to the Gmina may be appropriate); and (5) a communications strategy once a disposition plan has been established.

One method of gathering this data is to survey users. For example, by conducting a survey, the company can identify who attends what types of events, how often and what they are willing to pay. For a survey to be useful, the structure of the questions and the way it is administered must be consistent. All participants in the survey must be asked the same questions.

There are a number of survey methods available. Some of these include: a

questionnaire, either oral or written; interview groups, where a small group of people is gathered and asked in-depth questions; and an on the spot survey, where users are asked questions as they use the facility.

The type of survey method used is dependent upon the sort of information to be gathered. Appendix 3A discusses the concepts for surveying user attitudes toward social assets, incorporating those attitudes when developing social asset disposition plans, initiating a strategy to communicate those plans, and incorporating those affected by the plans into the process. Appendix 3B contains an example of a survey questionnaire that was conducted using a random sample of residents in an enterprise-owned housing complex.

Step 2: Assess the Competition for Each Asset: Determine if the asset facility is the only one of its type in the area and, if not, if it is more or less attractive and/or functional than the others. The level of competition will also affect the price elasticity for services or events charged for use of the asset.

Step 3: Combine the results of the surveys with the company's own information about the asset, including usage levels, entry fees, etc.: Following the sample questionnaire in Appendix 3B is an example of some of the data that can be obtained from the questionnaire and used to help determine user attitudes, the future role of assets, and how to market asset decisions more effectively.

Appendix 3A. A Community and Labor Relations Program for Divesting Social assets

1. INTRODUCTION

The transformation of a centrally planned command economy into a market economy is not only a process of economic and organizational change, but also a process of social and political change. As a result, some group interests cannot be satisfied to the same extent as they had in the past; new social structures, role distributions and group interests emerge.

As noted elsewhere, under the centrally planned socialist economy a system, social and community services were offered by state-owned enterprises. The provisions of these services by the enterprise has led to the emergence of certain social and political expectations. These include:

- o Enterprise employees and members of local communities expect access to benefits provided by the enterprise social assets. Access to services provided by these assets is considered an obvious fact;
- o There is limited awareness of the costs associated with the operation of the social assets. The financial costs associated with the existence of the social benefits system is usually unknown to its beneficiaries;
- o Services provided by the social assets are part of the enterprise employee wage and benefit package and serve to make employment in a given enterprise more attractive. In the socialist economy, operating social asset facilities was a method by which state-owned enterprises competed with each other by offering a wide range of social assets to attract the best workers, who were considered "scarce resources."

From the point of view of an employee or a local community member who uses and benefits from the availability of the social assets, their divestment means:

- o the possibility of reducing the amount of benefits offered by the assets;
- o the possibility of increasing the costs to individuals of certain benefits;
- o changes in the rules governing the distribution and use of social assets.

This is not to say that changes in the social benefit system must result in a change for the worse for enterprise employees. Divesting of social assets may in the long run benefit employees. However, the benefits of divestment are not always obvious. Therefore, it is important that employees and communities be made aware of these benefits. To achieve this awareness, it is necessary to communicate new economic responsibilities of the enterprise and encourage participation by affected users in developing new provision of social asset services. This is the purpose of a community and labor relations program.

2. GOALS OF THE PROGRAM

In order for the divestiture of social assets to be carried out without undue conflict, enterprise management must work to gain acceptance of any divestment program by those who benefit from the services provided by the social assets.

Gaining the acceptance and support for divestment by the parties affected by the changes is one of the strategic objectives of the program. Taking into consideration the attitudes and expectations of the user groups, the following principles should be incorporated into the strategy to achieve this objective:

- o Question the "obvious character" of the social asset system to which "everyone is entitled";
- o Make the users of social assets aware of the costs associated with the assets. Present them as an element of the financial obligations of the enterprise;
- o Inform users of the different rules governing the availability and accessibility of social assets in a market economy, whereby the distribution of benefits is an element of a precise employment policy of the enterprise.

The realization of a program to divest social assets must take into account the complex issues of communication directed at enterprise employees and members of the local community, especially those groups that treat social asset benefits as an important element of their benefits as an employee of the enterprise.

The realization of these strategic objectives involves formulating a set of operating goals, including informative, persuasive and educational goals.

a. Informative goals

The task is to inform employees, members of the local community, and all other interested parties of:

- o the economic and organizational need for implementing a program to divest social assets;
- o the aim of the activities carried out in connection with divesting social assets;
- o how social asset divestment will be implemented;
- o the consequences of divesting social assets for individual groups, especially the positive effects these changes can bring about to these groups.

b. Persuasive goals

- o to allay peoples' fears associated with a change in the social asset system;

- o to convince the targeted audience of the advantages of privatization activities and that those activities are in the interest of the enterprise and its employees,
- o to encourage affected groups to participate in the privatization process.

c. Educational goals:

- o to educate interested parties about the new rules governing the use of social assets.

3. USERS OF SOCIAL ASSETS AND THEIR ATTITUDES

a. The Necessity of Conducting Research

Users may feel threatened by the divestment of social assets. That feeling of threat may result in opposition to the divestiture process. The probability that opposition will occur is proportional to the importance attached and the extent to which the assets vitally affect individual users. For example, in the case of enterprise housing. Opposition may surface in two forms:

- o active opposition;
- o passive opposition.

Active opposition depends not only on the degree to which individual interests are threatened, but also on the strength of affected groups, the potential for organizing mass protests and articulating group demands. An example of active opposition may be observed in the case of Huta Warszawa, where the tenants of company apartments protested against a foreign investor taking over the enterprise housing. The refusal of residents to participate in the process of purchasing company housing is a fairly common example of passive protest.

In order to implement the process of divesting social assets without unnecessary conflict, it is important to investigate the social situation within the enterprise and local community beforehand. Research should concentrate particularly on those groups most threatened by these activities.

It is important to bear in mind that at moments of social change, people often entertain unjustified fears and anxieties. Lack of information is one of the elements that augments these tendencies. Therefore, it is important to analyze such fears and take early preventive action in the form of an information campaign on the divestment process.

Analyzing the social situation is indispensable for the achievement of two goals including:

- (1) making decisions about choosing the appropriate form of activity, taking into

consideration the cost to society; and

(2) designing and implementing a communications campaign.

b. Research Goals

Research will serve to assist in determining the overall strategy for divesting social assets and in designing a communications strategy. To achieve these goals, the research should provide answers to the following types of questions concerning users of social assets, user attitudes, and questions designed to provide specific information necessary in planning and conducting a communications campaign.

(1) Questions concerning users of social assets:

- o Who are the users of the social assets which are to be divested? It is especially important to determine the degree to which assets are used by enterprise employees or their families, pensioners of the enterprise, members of the community, or those who are in no way connected with the enterprise or the local community.
- o What is the frequency or intensity of use of the social asset per user group?

Note: When deciding on the strategy, the enterprise usually will be more interested in the continued maintenance of benefits for employees and their families and pensioners than for those only loosely or in no way associated with the enterprise.

(2) Questions concerning user attitudes:

- o What is the subjective value or importance of these social assets for each user group, particularly for enterprise employees and members of the local community? (This is the value axis in the subsidy/value Chart I-H.)
- o What are the "boundaries of compromise" for user groups? This includes issues such as price elasticity of the benefits, substitution of benefits by the enterprise, and readiness of users to accept the new rules for use of the social assets.
- o What will be individual or user group strategies when the rules of distribution and use of social assets change?

(3) Questions designed to obtain specific information and are important in the design of the communications strategy:

- o What arguments for divesting social assets will be most influencing to user groups? (For example, arguments based on the idea of increased efficiency or those which appeal to users' sense of justice and fairness).
- o Which media and information channels are most suitable for communicating

with user groups? (For example, information distributed via local press and radio and broadcasts on the enterprise radio network).

- o Who are the "opinion leaders" for the various groups? Which individuals or institutions are considered to be authorities?

c. Research Methods

The general rule is that in-depth research and promotional-communication activities should be conducted by experienced specialists in that field. In the case of large projects, specialized market research and public relations firms ought to be retained if detailed surveys, in-depth individual and focus group interviews, and sophisticated polling techniques are to be used. It is important to ensure statistical accuracy, confidence that attitudes are representative and accurately reflected, and to avoid potential errors which could result in misleading assumptions of views towards the divestment process, thereby endangering the success of the entire program.

While some individual enterprises may have the necessary skills and experience to carry out basic research, most should be careful about attempting to carry out sophisticated analysis. However, all enterprises should perform the basic research to identify user groups and the degree to which the assets are used, before determining whether a more sophisticated analysis is necessary.

Data collection:

1) The enterprise should make full use of existing company data which often contains a basic source of information about users of social assets. Information can be obtained by conducting an analysis of existing documents and data available at the enterprise or at the disposal of managers of the assets. For example, the data can provide information on the tenants of company apartments or on the users of various services offered by the Culture House.

2) Enterprise staff should collect information by conducting simple surveys which may provide additional basic information about the users. Such surveys can be used to update, expand or analyze the data collected on the basis of existing documents. In preparing and conducting such a mini-survey, it is important to bear in mind the following principles:

- o The survey should be brief and include only a few questions at maximum;
- o The questions should be formulated using simple colloquial language. Jargon or dialects should not be used. Avoid the use of official language;
- o The survey should preferably be anonymous (this may be difficult to achieve in the case of tenants of enterprise housing, but possible in other cases);
- o The survey should concern simple, unambiguous facts. For example:

"Are you:

- a) an employee of enterprise "X"
- b) a pensioner of enterprise "X"
- c) a family member of an employee/pensioner of enterprise "X"
- d) a person with no association to any of the above mentioned groups."

(Note: Choose only one response)

Another example of a simple and unambiguous question is:

"How many times in the last two months have you been to the cinema at the Culture House?"

(enter the number: x times)

The survey should be conducted on the basis of a random sample, i.e., all members of the target groups have an equal chance of being included in the sample. Bear in mind that a sample made up of "people encountered accidentally" does not fulfil this condition. The principle of randomness is satisfied only for a sample selected according to the predefined criteria. For example:

- * choosing every n -th name (where n is an arbitrary constant) from a full list of enterprise employees, beginning with a randomly selected name on the list;
- * questioning every n -th person using the swimming pool in the course of one week or on several days chosen at random.

3) Enterprise management can gather information concerning the prevailing attitudes and anxieties of employees by conducting a series of informal meetings and talks with representatives of trade unions, and informal "opinion leaders" within the enterprise. These "opinion leaders" are usually employees who have been working at the enterprise for a long time, know the environment and are a relative authority to their colleagues. There are no strictly defined rules to assist in identifying such leaders, but often it is known at the enterprise who they are.

d. External Assistance

More complex, in-depth research, that is often carried out by a professional research firm, employs a variety of qualitative and quantitative research methods.

a. Qualitative Methods

The most common qualitative methods are:

- o the focus group interview; and
- o the individual in-depth interview.

A focus group interview is an interview conducted by a qualified moderator according to a ready scenario for discussion on a given topic with a group of 8-12 people. A detailed analysis of the content and dynamics of the discussion makes it possible to assess the opinions, emotions and arguments of the participants.

An individual in-depth interview is a discussion conducted by a qualified interviewer according to precise guidelines. The interviewer's task is to collect in-depth information about facts, attitudes and opinions of the interviewees.

b. Quantitative Methods

Quantitative methods are used primarily in cases involving large scale projects where the number of participants justify use of such methods. The most common quantitative method is the detailed random sample survey.

A random sample survey is generally conducted on the basis of a relatively numerous random sample involving from a few dozen to a few hundred people with the aid of a survey questionnaire. The answers of the interviewees are marked on the questionnaire and analyzed according to statistical methods. Survey results are presented in the form of graphs, tables or mathematical models.

In preparing the survey, the following documentation is necessary to identify:

- (1) The goal of the research. Define the goal to be achieved from the survey, i.e., what information is desired. In order to accumulate the desired information, a list of questions may need to be developed and answered in the course of the research.
- (2) Research methods. Decide which questions will be answered and what research methods will be employed. Apart from obtaining information on the research methods, the enterprise should be aware of the types of research tools to be employed. For example, the ready scenarios for group interviews, guidelines for the individual interviews, questionnaire forms and, more importantly, a detailed description of the sampling procedures.
- (3) The form in which the results of the research will be presented. This could consist of one or several of the following: a report on the focus group interviews, a report on the results of the survey and a general research report, a so-called "top line" or summary of the most important results submitted to management, an oral presentation of the main results to management, a detailed discussion of the results with enterprise staff responsible for conducting the information campaign, and advisory services concerning data utilization after research has been completed.

- (4) A precise timetable and budget for the research. A detailed schedule for carrying out all research activities and a cost calculation should be presented, with each activity itemized separately.

4. THE COMMUNICATION CAMPAIGN STRATEGY

After completing the research, the next step is planning the informational-promotion campaign. The principle elements of the campaign include:

- o identifying target audiences;
- o preparing the appropriate form and content of the message to be communicated;
- o choosing the type of "information channels" or media to be used to communicate the message.

a. Target Audiences

In order to conduct an effective promotion campaign for divesting social assets, it is necessary to accurately identify the groups of people whose interests may be threatened as a result of implementing such a program. Identifying the groups of most importance for the success of the program, both to gather information from and communicate information to, is imperative. Furthermore, as the complexity of the program increases, the target groups of the campaign will grow in number. The message and the media used to communicate the message must be defined in terms of the target audience.

Possible target groups include:

- o all members of the local community;
- o all enterprise employees;
- o direct users of the individual social assets;
- o opinion leaders;
- o organizations which represent workers (labor unions) or users of social assets. For example, sport clubs in the case of sport facilities or hobby associations in the case of a culture house.

Note: It is possible that a certain group of users which wants to protect its interests but to date has not had formal representation, may create such representation ad hoc if the privatization program is initiated and some facilities become separated from the enterprise. For example, it is likely that the tenants of company housing will organize a committee which will be responsible for protecting their interests and participating in negotiations with the enterprise on the conditions of the company's offer. In such a situation, it is

recommended to quickly involve the representatives of the group in the formal negotiation and coordination process. Inclusion will force such entities to act according to defined principles and make it more difficult for them to simply block the process without developing clear alternatives.

It is recommended that people responsible for the promotion campaign prepare lists of target audience groups and the various messages to be communicated to each. For example, one group may consist of tenants of company apartments, which may be divided into three subgroups: (1) employees of the enterprise; (2) pensioners; and (3) tenants who have no connection to the enterprise. Each of these groups may require a slightly different message.

Note: Promotion and communication activities should take into account the specific conditions prevailing locally, such as the dynamics and influence of the labor unions, their mutual relations, and the attitude of the local community towards the changes in question. The general principle, to engage employee representatives in the process of practical decision making and demand that they make practical proposals that take into account the business finances of the enterprise, thereby institutionalizing the negotiating process. A system of periodic meetings with labor union representatives or participation of employee representatives will help the process.

b. Preparing the Message

In preparing the message, it is important to bear in mind that divesting social assets is an element of a wider program of ownership, organization and structural transformation taking place within the enterprise. The messages concerning social asset divestment should be included in a wider context of information about the overall process.

The message should aim to (1) inform; (2) persuade; and (3) educate. It should also incorporate the basic principles of form and content, namely:

- o Be communicative. The message should be clearly communicated in colloquial language. The use of official language or technical language and terminology, such as legal language, should be avoided. If it is absolutely necessary to use such language, define the terms which may not be commonly understood.
- o Contain practical information. The message should be to the point and contain information of practical significance for the users (the principle of "news for use"). Overgeneralizations and attempts at propaganda will not be well received; people will conclude they are not being treated seriously. The result may be negative attitudes towards the program.
- o Aim at calming peoples' fears and apprehensions. The message should aim to soothe anxieties associated with the possibility of losing certain benefits provided by the social assets or limiting their availability. Again, the importance of conducting proper research which may pin point these fears is emphasized.

Being unaware of any practical dangers to the program, enterprise management may fail to see the need for allaying these fears. However, people will continue to harbor fears independently of the fact that they cannot be rationally justified. Fears and apprehensions are real social facts and can result in severe consequences unless they are dealt with early and with sensitivity.

The message directed at all groups should contain the following elements:

- (1) An explanation of the general reasons for divesting social assets in the context of the overall privatization process undertaken by the enterprise. Research will provide data on the target groups' understanding of the process of transformation of the enterprise. The data will reveal whether they perceive it as unavoidable and necessary and in effect profitable to the enterprise and themselves. Therefore, part of the message should be directed at such expectations.
- (2) Information concerning the specific reasons for implementing the program. This includes arguments supporting the need for evidencing costs associated with the operation of the social assets which previously were "hidden" in the balance sheet, for improving management of the assets, and reducing subsidies.
- (3) Information concerning specific directions of company activity. This may include, the company's plan to sell its apartments to the tenants, to privatize the sports facilities, or to initiate a system of self-financing of the holiday resorts.
- (4) Information on "shock absorbers" to protect against losses incurred as a result of the program. For example, make a point of informing users that the system of holiday benefits or the costs of utilizing the sports facilities will remain unchanged if that is indeed the case.
- (5) A comparison of the advantages and disadvantages of divesting the social assets. The advantages are the general gains which result from the more effective use of social assets and the gains of the individual user groups. For example, gaining full ownership rights to the company apartments, the possibility of being able to freely choose from among the various benefits offered, and improved quality of services offered by the assets. Disadvantages to some user groups also must be addressed, such as losses incurred resulting from the divestment activity and the nature of those losses. For example, if services offered by the Culture House are reduced due to a cutback or elimination of subsidies, the users of those services should be informed that these services will be reduced or no longer be available.

The messages addressed to the various groups of users should be specific and aim to develop the above topics. Arguments should be precise and information concrete and practical.

It is recommended that the person responsible for the campaign prepare, in co-operation with the managers of the individual assets, a detailed list of information, topics, and arguments, which may be used as the subject of communication activities directed at the target groups.

c. Communication Channels

Communication is an integral part of the program and includes both: (a) direct communication; and (b) indirect communication. Direct communication is carried out by the individuals responsible for the divestment program. It should include:

- o meetings with employee and community representatives, with special attention devoted to organizations representing users of social assets undergoing privatization, (i.e., labor unions, associations, sports clubs);
- o open meetings with groups of users (i.e., tenants of company owned housing),
- o meetings with target groups (i.e., older workers, pensioners).

General suggestions concerning the organization of meetings are as follows:

- o all formal meetings should be conducted with adherence to the rule that communication should be formalized to the maximum. Bulletins informing about the meeting, the agenda, or alternative proposals should be prepared and distributed beforehand;
- o at open meetings, participants should be given printed bulletins or leaflets;
- o open meetings should be announced in the media and advertised in the press;
- o after the meetings, information should appear in the various media, informing that such a meeting took place and the issues discussed.

Indirect communication activities include:

- o if possible, direct mailings to the users of social assets (for example, to tenants of company apartments);
- o media-directed activities within the enterprise itself. For example, at the enterprise, radio broadcasts on the enterprise radio network, notices on information bulletin boards or bulletins distributed within the enterprise. At the community level, broadcasts on local radio stations and in the local press.

Media are divided into media at the enterprise level and public media. The principles of their operation are different. At the enterprise, the person responsible for conducting the campaign can use the various means of communication available directly. However, in the case of public media, this is impossible. For public media, it is best to prepare press

information packages and include some suggestions as to the way the information could be used. Interviews can also be arranged with representatives of the enterprise. Bear in mind, that public media are independent and may not be interested in these proposals.

The most important element of an effective message is its comprehensibility. Therefore, all potential information to be distributed within the enterprise should be tested. The best form of testing comprehensibility is to ask several members of the potential target group (at the same level of education) to read and listen to the materials and relate what they understood and remembered. The results of such tests should be given due consideration.

There are two general principles of conducting a media campaign:

- (1) do not surprise people with announcements of decisions that have already been made. Maintain a steady flow of information at all times giving the participants the feeling of passive participation in the process;
- (2) ensure that the message is clear and easily communicated.

Finally, bear in mind that the informational-promotion campaign will be carried out in a social environment where certain customs and traditions prevail. It is essential that in the course of the campaign, some of these traditions be observed. This may include, for example, the popular custom of holding annual management meetings with pensioners of the company or celebrating enterprise or branch holidays.

5. IMPLEMENTING THE COMMUNICATION PROGRAM

Before implementing the campaign, a detailed work plan should be prepared. Some examples of work plans are presented below.

EXAMPLE I.

I. TYPE OF ASSETS

All social assets owned by the enterprise.

II. TARGET AUDIENCES

Enterprise employees, pensioners and local community.

III. THE MESSAGE

- (1) Inform the target audience that the enterprise is initiating the privatization process,
- (2) Explain that in order for the enterprise to attract a foreign investor, it needs to divest its social assets, including company flats and holiday resorts,
- (3) Identify the advantages for the enterprise and users of the assets in undertaking this activity,
- (4) Identify the possible disadvantages for users,
- (5) Inform target groups about the "shock absorbers," for example, flats can be paid for in instalments and the company will continue to provide subsidized vacations,
- (6) Announce that the program has been agreed to and accepted by the trade unions.

IV. MEDIA

- (1) Prepare a speech to be delivered by the director of the enterprise to the employees on the radio station at the enterprise,
- (2) Arrange for the director to give an interview to the local press,
- (3) Publish a series of explanatory articles about the issues involved in the company newspaper,
- (4) Engage labor unions in the process by having them pass on the information through their channels of communication to the targeted groups.

EXAMPLE II.

I. TYPE OF ASSETS

Company housing

II. TARGET AUDIENCE

Tenants of company housing

III. THE MESSAGE

- (1) Inform tenants that they will be able to buy their apartments at prices below market rate,
- (2) Provide a detailed description of the sale conditions,
- (3) Describe the advantages and disadvantages of buying an apartment (property),
- (4) Give an explanation of the reasons for selling company housing,

IV. MEDIA

- (1) Send letters to all tenants informing them of the sales offer,
- (2) Publish a series of articles explaining the company's actions in the local press,
- (3) Conduct a meeting between a person overseeing the sales program and the tenants. The meeting should be preceded by:
 - a. press announcements,
 - b. information broadcast on the enterprise radio station,
 - c. posters hung in the halls of blocks of apartments informing about the sales program and the planned meeting,
 - d. the distribution of information leaflets in all tenant mail boxes.
- (5) After the meeting, distribute explanatory leaflets to participants.

EXAMPLE III.

I. TYPE OF ASSETS

Holiday resorts

II. TARGET AUDIENCE

Employees that spend their holidays at the company-owned resort

III. MESSAGE

- (1) Explain that the holiday resorts have to become self-financing,
- (2) Inform the target audience that holiday resorts will also be available to clients outside the enterprise,
- (3) Inform the target audience that all holiday makers will have to pay the full cost of the holiday. However, company employees will receive partial refunding according to specific rules,
- (4) Discuss how the effectiveness of the operations of the holiday resorts and the quality of available services will increase,
- (5) Inform the target audience that this solution has been accepted by the labor unions,

IV. MEDIA

- (1) Broadcast information about the planned changes on the enterprise radio station,
- (2) Publish explanatory articles on the subject in the enterprise newspaper,
- (3) Post information on labor union bulletin boards,
- (4) Distribute brief information leaflets free of charge at the appropriate department at the enterprise and trade union office explaining the principles of applying for a refund,
- (5) Explain the new principles at an annual meeting of management and pensioners.

The above plans must be carried out according to a precise schedule of the campaign. Individuals responsible for implementing the various stages of the campaign should be appointed.

It is recommended that one person be responsible for the overall supervision of the

campaign. In addition to being responsible for preparing materials and speeches to be given by enterprise representatives, the coordinator of the campaign will co-operate closely with enterprise management and managers of the individual assets and other involved parties to carry out the campaign.

6. FEEDBACK

Throughout the campaign, there will be feedback of information. The campaign coordinator should evaluate this information and react appropriately.

Feedback will be received from the following sources:

- o in the form of reactions of the participants at meetings. It is important that this information be registered and analyzed in the form of a compendium;
- o reactions of organizations representing various groups, which should also be registered;
- o letters, petitions and protests in written form.

It is recommended that the coordinator of communication activities encourage the recipients of the information to articulate their reaction to the message. These reactions should be registered, arranged systematically and analyzed by the person in charge of the campaign.

Evaluating feedback concerns two issues:

- (1) The information campaign itself. It may turn out that some aspects of the campaign are ineffective, information may be ambiguous or some messages may not be acknowledged. This means that the plan has to undergo modifications and the message has to be strengthened at some points by introducing new information or media into the campaign.
- (2) The program of divesting of social assets. While the program is being implemented it may turn out that some goals have not been pursued according to the plan because there is strong opposition or there is no active participation in their realization. In this case, it may be necessary to consider modifying the transformation program itself, omitting some elements or making changes in the implementation timetable.

Appendix 3B. Sample Survey Questionnaire

PRZYKŁADOWY KWESTIONARIUSZ

Na naszą ankietę będą odpowiadali losowo wybrani mieszkańcy budynków należących do przedsiębiorstwa. Odpowiedzi będą anonimowe i posłużą jedynie do uzyskania zbiorczych zestawień statystycznych.

Chciał/a/bym zadać Panu/i kilka pytań na temat prywatyzacji zakładu i jego obiektów socjalnych.

1. Czy słyszał/a Pan/i o planach prywatyzacji przedsiębiorstwa?

- a. Tak, dużo o tym słyszałem
- b. Tak, wiele o tym słyszałem, ale nie znam szczegółów
- c. Tak, słyszałem, ale nic więcej na ten temat nie wiem
- d. Nic o tym nie wiem

1	
2	
3	
4	

2. Jak Pana/i zdaniem prywatyzacja wpłynie na sytuację zakładu?

- a. Wpłynie korzystnie
- b. Nic się nie zmieni
- c. Wpłynie niekorzystnie

1	
2	
3	

3. Jak Pana/i zdaniem prywatyzacja wpłynie na sytuację życiową Pana/i i Pana/i rodziny?

- a. Wpłynie korzystnie
- b. Nic się nie zmieni
- c. Wpłynie niekorzystnie

1	
2	
3	

4. Jak Pana/i zdaniem prywatyzacja wpłynie na sytuację miasta?

- a. Wpłynie korzystnie
- b. Nic się nie zmieni
- c. Wpłynie niekorzystnie

1	
2	
3	

5. Jak Pana/i zdaniem prywatyzacja zakładu wpłynie na sytuację zatrudnionych tam pracowników?

- a. Wpłynie korzystnie
- b. Nic się nie zmieni
- c. Wpłynie niekorzystnie

1	
2	
3	

6. Z jakich obiektów należących do zakładu mogą korzystać mieszkańcy miasta?

- a. 6
- b. 7
- c. 8
- d. 9
- e. 10
- f. 11

7. Czy Pana/i znajomi korzystali z jakichś obiektów należących do przedsiębiorstwa?

- Tak 1 | 12
- Nie [Przejdź do pytania 8] 2 |

7a. Proszę wymienić, jakie to były obiekty?

- a. 13
- b. 14
- c. 15
- d. 16

8. Czy Pan/i albo ktoś z Pana/i najbliższej rodziny w ciągu ostatniego roku korzystał z wczasów lub kolonii dofinansowanych przez zakład?

- Tak 1 | 17
- Nie [Jeżeli nie, to przejdź do pytania 9] 2 |

8a. Z jakich ośrodków korzystał/a Pan/i lub członkowie Pana/i rodziny? Proszę wskazać nazwy ośrodków odwiedzonych przez Państwo w ciągu ostatnich dwóch lat?

- Ośrodek Wczasowy # 1 18
- Ośrodek Wczasowy # 2 19
- Ośrodek Wczasowy # 3 20
- Ośrodek Wczasowy # 4 21
- Kolonie 22

9. Kto w Pana/i rodzinie korzystał z wczasów?

- 9a. respondent Tak 1 | 23
 Nie 2 |
- 9b. dzieci Tak 1 | 24
 Nie 2 |
- 9c. współmałżonek Tak 1 | 25
 Nie 2 |

10. Czy uważa Pan/i, że cena 1,750,000 zł za dwutygodniowe wczasy (kolonie) dla jednej osoby jest:

zdecydowanie za wysoka
do przyjęcia
za niska

1	
2	□ 26
3	

11. A czy cena.....zł za takie wczasy (kolonie) dla jednej osoby jest:

zdecydowanie za wysoka
do przyjęcia
za niska

1	
2	□
3	
	□ 27
	□ 28
	□ 29
	□ 30

12. Czy Pan/i lub ktoś z Pana/i najbliższej rodziny w ciągu ostatnich trzech miesięcy korzystał z.....należącego do przedsiębiorstwa?

Tak
Nie

- a. krytego basenu
- b. basenu otwartego
- c. zajęć aerobiku
- d. siłowni
- e. stadionu
- f. sali gimnastycznej

1	
2	□
	□ 31
	□ 32
	□ 33
	□ 34
	□ 35
	□ 36

13. Czy Pan/i lub ktoś z Pana/i najbliższej rodziny w ciągu ostatnich trzech miesięcy był na jakichś zawodach rozgrywanych na obiektach sportowych?

Tak
Nie

1	□ 37
2	

14. Jeśli tak, to na jakich?

[Wpisujemy dyscypliny sportu - każde zawody w osobnym wierszu]

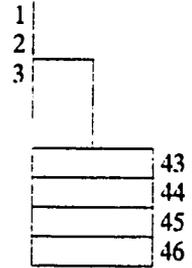
- | | |
|---------|----|
| a. | 38 |
| b. | 39 |
| c. | 40 |
| d. | 41 |
| e. | 42 |

[Uwaga! W pytaniach 15-21 chodzi o obiekt Klubu Sportowego]

15. Czy Pana/i zdaniem cena.....za bilet wstępu na mecz piłki nożnej jest

zdecydowanie za wysoka
do przyjęcia
za niska

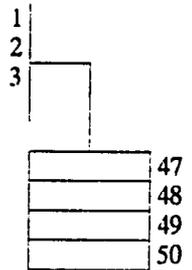
5 tys zł
15 tys zł
50 tys zł
25 tys zł



16. Czy Pana/i zdaniem cena.....za bilet wstępu na basen kryty jest

zdecydowanie za wysoka
do przyjęcia
za niska

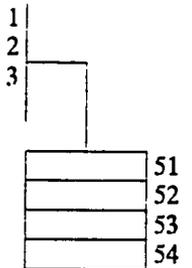
5 tys zł
15 tys zł
40 tys zł
20 tys zł



17. Czy Pana/i zdaniem cena.....za bilet wstępu na basen otwarty jest

zdecydowanie za wysoka
do przyjęcia
za niska

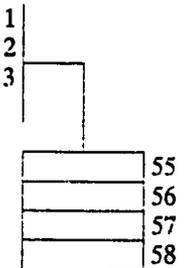
5 tys zł
15 tys zł
40 tys zł
20 tys zł



18. Czy Pana/i zdaniem cena.....za bilet wstępu na mecz koszykówki jest

zdecydowanie za wysoka
do przyjęcia
za niska

5 tys zł
15 tys zł
50 tys zł
25 tys zł



19. Czy Pana/i zdaniem cena.....za bilet wstępu na zawody lekkoatletyczne jest

zdecydowanie za wysoka
do przyjęcia
za niska

5 tys zł
15 tys zł
30 tys zł
50 tys zł

1	
2	
3	
	59
	60
	61
	62

20. Czy Pana/i zdaniem cena.....za korzystanie z kortu tenisowego jest

zdecydowanie za wysoka
do przyjęcia
za niska

5 tys zł
10 tys zł
20 tys zł
30 tys zł

1	
2	
3	
	63
	64
	65
	66

21. Czy pracownicy zakładu mają zniżkę na bilety wstępu na wyżej wymienione obiekty sportowe?

- a. Tak
- b. Nie [Przejdź do pytania 22]

1		67
2		

21a. Ile procent wynosi ta zniżka?
.....%

68

22. Czy chciałby/aby Pan/i, żeby Pana/i dziecko chodziło raz w tygodniu z całą klasą na lekcję pływania (w ramach wychowania fizycznego)?

- a. Tak
- b. Nie

1		69
2		

23. Jaka sumę miesięcznie byłby/aby Pan/i w stanie wyłożyć na ten cel?

.....tysięcy złotych

70

24. Czy chciałby/aby Pan/i, żeby Pana/i dziecko chodziło raz w tygodniu z całą klasą na lekcje tenisa (w ramach wychowania fizycznego)?

- a. Tak
- b. Nie

1		71
2		

25. Jaka sumę miesięcznie byłby/aby Pan/i w stanie wyłożyć na ten cel?

.....tysięcy złotych

72

26. Proszę powiedzieć, w jakich imprezach lub kursach organizowanych przez Zakładowy Dom Kultury uczestniczyły Pana/i dzieci?

- a. 73
- b. 74

27. Proszę powiedzieć o jakich imprezach lub kursach organizowanych przez Zakładowy Dom Kultury słyszał/a Pana/i. Proszę wymienić wszystkie.

- a. 75
- b. 76
- c. 77
- d. 78

28. Proszę powiedzieć, w jakich imprezach lub kursach organizowanych przez Zakładowy Dom Kultury Pan/i uczestniczył/a.

- a. 79
- b. 80

29. Czy zgodził/a/by się Pan/i na przejęcie obecnie zajmowanego mieszkania, gdyby oferowano je Panu/i za darmo?

- a. Tak [Przejdź do pytania 30]
- a. Nie [Przejdź do pytania 31]
- a. Nie wiem [Przejdź do pytania 31]

1	
2	
3	81

30. Czy może Pan/i w paru zdaniach wyjaśnić dlaczego Pan/i jest tym zainteresowany/na?

[Uwaga! Powody należy wypisać w punktach]

- a.
- b.
- c.
- d.
- e.
- f.

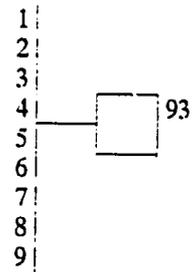
31. Czy może Pan/i w paru zdaniach wyjaśnić dlaczego Pan/i nie jest tym zainteresowany/na?

[Uwaga! Powody należy wypisać w punktach]

- a.
- b.
- c.
- d.
- e.
- f.

4. Jakie ma Pan/i wykształcenie?

- a. niepełne podstawowe
- b. podstawowe
- c. zasadnicze zawodowe
- d. niepełne średnie
- e. średnie ogólnokształcące
- f. średnie zawodowe
- g. pomaturalne
- h. niepełne wyższe
- i. wyższe



5. Czy Pan/i pracuje w przedsiębiorstwie?

- Tak
- Nie



6. Ile wynosi miesięczny czynsz za Pana/i lokal (razem z opłatami za światło, wodę i gaz)?

.....tysięcy złotych.

95

7. Jaka powierzchnię ma Pana/i mieszkanie?

.....m²

96

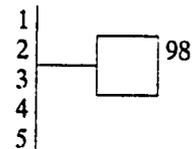
8. Kto jest najemcą lokalu?

- Respondent
- Inni (kto w relacji do respondenta)



9. Czy najemca lokalu jest

- a. pracownikiem przedsiębiorstwa
- b. emerytem lub rencistą przedsiębiorstwa
- c. byłym pracownikiem przedsiębiorstwa
- d. nigdy nie pracował w przedsiębiorstwie
- e. pracownikiem gminy opłacanym przez przedsiębiorstwo



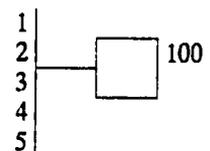
9a. Jeśli najemca jest byłym pracownikiem, kiedy najemca przestał pracować w przedsiębiorstwie?

[Proszę podać rok, w którym najemca przestał pracować w Przedsiębiorstwie.]

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10. Na jakim stanowisku pracuje najemca lokalu?

- a. pracownik fizyczny niewykwalifikowany
- b. brygadzista i robotnik wykwalifikowany
- c. technik, mistrz
- d. inżynier, inny specjalista techniczny
- e. kierownik, dyrektor



11. Czy najemca lokalu jest

mężczyzną
kobietą

1 |
2 | 101

12. W którym roku urodził się najemca lokalu?

102

13. Jakie wykształcenie ma najemca lokalu?

a. niepełne podstawowe
b. podstawowe
c. zasadnicze zawodowe
d. niepełne średnie
e. średnie ogólnokształcące
f. średnie zawodowe
g. pomaturalne
h. niepełne wyższe
i. wyższe

1 |
2 |
3 |
4 | 103
5 |
6 |
7 |
8 |
9 |

14. W którym roku się wprowadzili Państwo do obecnie zajmowanego lokalu?

104

NUMER ANKIETY

NUMER KODERA

EXAMPLE # 1

SAMPLE OF SURVEY DATA OBTAINED USING THE SAMPLE QUESTIONNAIRE

USERS OF THE COMPANY'S SOCIAL ASSETS

ASSET	NUMBER OF RESPONDENTS	USER GROUPS				AGE PER USER GROUP (1)			GENDER		EDUCATION				ADDITIONAL COMMENTS (based on qualitative research)
		Company employee	Non-employee	Pensioner	Missing data	Company employee	Non-employee	Pensioner	Men	Women	Primary	Technical	Secondary	Higher	
Company Housing	150	32%	32%	35%	1%	a			70%	30%	23%	28%	30%	18%	
						b	2%								
						c	15%	7%							
						d	24%	28%							
						e	54%	25%							34%
						f	5%	40%							66%
Sports Facilities	147 – spectators of a basketball game	14%	68%	8%	10%	a		2%	88%	12%	4%	54%	30%	12%	
						b	20%	42%							
						c	25%	29%							
						d	20%	13%							
						e	35%	13%							36%
						f		1%							64%
Sports Facilities	47 – users of the indoor pool	10%	78%	2%	10%	a		2%	57%	43%	8%	40%	28%	24%	
						b		51%							
						c		18%							
						d		19%							
						e		8%							
						f		2%							
Resorts	150	55% (2)	16% (2)	29% (2)		N/A			N/A		N/A				Heads of families which most often use the resorts have primary or technical education, while the heads of families which are most eager to use the resorts hav higher education.
House of Culture	150 (3)	N/A				N/A			N/A		N/A				80% of all activities offered by the House of Culture are youth-oriented.

(1) Age group

- a – to age 15
- b – 16 – 25 years
- c – 26 – 35 years
- d – 36 – 45 years
- e – 46 – 60 years
- f – over 61 years

(2) The data concerns heads of families which live in enterprise housing.

(3) Due to the way respondents were asked the question regarding use of the Culture House, information for the above categories can not be provided.

EXAMPLE # 2

SAMPLE OF SURVEY DATA OBTAINED USING THE SAMPLE QUESTIONNAIRE

IMPORTANCE OF THE SOCIAL ASSETS TO USERS*

ASSET	NUMBER OF RESPONDENTS	PERCENTAGE OF RESPONDENTS AND THEIR FAMILIES WHO USE THE ASSET	ADDITIONAL COMMENTS (based on qualitative research)
Company Housing	150	100%	<p>Percents given are estimates. They attempt to show not only the level of usage, but the value of the social assets according to survey respondents. Based on the data, the ranking of the assets according to their importance to users is as follows:</p> <ol style="list-style-type: none"> 1. Housing 2. Resorts and sports facilities 3. House of Culture
Sports Facilities	150	66% (1)	
Resorts	150	23% (1)	
House of Culture	150	14% (2)	

*The level of importance is measured in terms of the percentage of respondents who used the assets in the course of the last three months.

(1) For Sports Facilities and Resorts, percents given are based on positive responses to the following question:

"Have you or any one in your immediate family used the asset in the course of the last three months (in the case of resorts, in the course of the last two years)?"

(2) For the Culture House, percents given are based on positive responses to the following question:

"What courses or events organized by the House of Culture have you taken part in?"

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EXAMPLE # 3

SAMPLE OF SURVEY DATA OBTAINED USING THE SAMPLE QUESTIONNAIRE

COMPANY PROPOSALS AND USER RESPONSES

ASSET	NUMBER OF RESPONDENTS	SURVEY QUESTIONS		USER RESPONSES			ADDITIONAL COMMENTS (based on qualitative research)
				Employee	Non-employee	Pensioner	
Company Housing	150	Privatization	Sale in cash	4.2%	2.8%	3.5%	Percents given are based on positive responses for each user category.
			Sale in installments	19%	15.5%	16%	
			Neither proposal	8.3%	13.9%	16%	
		The Company's Offer	Sale in cash: Yes 9%	17%	34%	50%	Percents given are based on positive responses to the company's offer to sell the apartment for cash.
No 91%					Percents given are based on positive responses to the company's offer to sell the apartment in installments.		
Sale in installments: Yes 32% (1) No 53%	43%		34%	23%			
Sports Facilities	194	Separation/Privatization of Sports Facilities	People will gain as a result of the change?	2.9%	14.9%	0%	Percents given are based on positive responses to the survey question.
			People will lose as a result of the change?	8.7%	47.6%	6.9%	Concern over the separation of the sports facilities from the Company relates more to fear of losing the source of financing for the sport club and its athletes, rather than concern over the quality of events organized.
			No change? (No one will gain or lose)	2.3%	16.7%	0.6%	
Resorts	150	Separation/Privatization of Resorts	N/A	N/A	N/A	N/A	The separation of the resorts from the Company is not a real concern of the users of the resorts. The most important consideration for users of the resorts is the continuation of company-subsidized vacations and the ability to use the vacation subsidy at a resort of the user's choice.
House of Culture	150	Separation/Privatization of House of Culture	N/A	N/A	N/A	N/A	The separation of the House of Culture from the Company will not be opposed by users, if the current level of activities provided is maintained.

(1) The remaining 15% are undecided.

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EXAMPLE # 4

SAMPLE OF SURVEY DATA OBTAINED USING THE SAMPLE QUESTIONNAIRE

ACCEPTANCE OF HIGHER PRICES TO USE THE ASSETS AMONG USERS

ASSET*	NUMBER OF RESPONDENTS	INDIVIDUAL ASSET	PROPOSED PRICE (in zoty)	% OF RESPONDENTS WHO ACCEPT GIVEN PRICE	ADDITIONAL COMMENTS (based on qualitative research)
Company Housing	150			N/A	There is no statistical difference between Company employees, non-employees and pensioners in regard to the level of acceptance of the Company's sale offer.
Sports Facilities	150	Acceptable price of a ticket to a soccer game	5,000	96%	There is no statistical difference between Company employees, non-employees, and pensioners of the Company regarding the acceptance of ticket prices to use the sports facilities. There is no statistical difference between users and non-users regarding the acceptance of ticket prices to use the sports facilities.
			10,000	65%	
			25,000	12%	
			50,000	0%	
		Acceptable price of a ticket to use the indoor pool	5,000	90%	
			15,000	48%	
			20,000	12%	
			40,000	1%	
		Acceptable price of a ticket to use the outdoor pool	5,000	95%	
			10,000	60%	
			15,000	32%	
			20,000	12%	
		Acceptable price of a ticket to a basketball game	5,000	78%	
			15,000	56%	
25,000	32%				
50,000	2%				
Acceptable price for an areobics class	15,000	92%			
	25,000	72%			
	50,000	18%			
	70,000	0%			
Acceptable price for swimming lessons for your child (monthly)	10,000	100%			
	60,000	65%			
	70,000	40%			
	50,000	10%			
Resorts	150	Acceptable price of a two-week vacation (or camp for children)	800,000	70%	There is no statistical difference between Company employees, non-employees and pensioners of the Company regarding the acceptance of the price of a two-week vacation. There is no statistical difference between users and non-users regarding the acceptance of the price of a two-week vacation.
			1,750,000	6%	
			2,000,000	2%	
			3,000,000	0%	

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* Information can not be provided for the House of Culture due to the way the question was formulated.

Appendix 4. Capital Improvements and Expenditures

When assessing the physical condition of an asset, notes should be made about needed repairs and improvements. The categories listed below are general and some items could fit into more than one category. The categories exemplify some of the issues to consider when determining maintenance and capital improvement needs. The important idea is to identify all of the maintenance, repair and improvement work which needs to be done; it does not matter whether it is included in one category or another. Each work item should be described briefly but as precisely as possible, including measurements, so that the list of work items can be used to develop a maintenance and repair budget. On the following page is an illustrative example of some of the items that should be considered when preparing a maintenance schedule. The following categories of work should be considered to determine which ones apply to each asset:

- a. life safety - Any imminent threat to the life or safety of users or employees of the asset, including things like dangerous electrical wiring, broken fire alarms or ceilings which are in danger of collapse should be listed. In addition, less imminent, but still serious hazards such as broken steps and uneven sidewalks which could cause falls should be identified.
- b. hazardous materials - These are dangerous materials such as toxic chemicals or asbestos which should be removed in order to safeguard the health of employees or users.
- c. infrastructure repairs - Needed repairs to infrastructure such as cracked foundations due to settlement, wet basements or foundations, or insect damage, should be listed. These conditions may not be dangerous and may not even be very noticeable, but they affect the useful life of the structure, and these items usually cost more to repair later on if they are ignored and allowed to grow worse.
- d. energy efficiency and conservation - Work which will help to conserve energy and natural resources (such as electricity and water) should be listed. This includes making doors and windows close tightly, installing storm windows, replacing old inefficient heating plants, and repairing leaking pipes and faucets. This category of work is very important because it will result in long-term savings on operating costs, especially as the cost of energy and water rises in future years.
- e. deferred maintenance - This includes maintenance work needed to keep the structure and its mechanical equipment in good working order, but which may have been postponed due to lack of staff, funds or other reasons.
- f. cosmetic repairs - Relatively simple and inexpensive work items necessary to improve the appearance of the asset and to encourage as many people as possible to use it so that revenue can be maximized, should be identified. This category might include such things as painting, new carpet, new light fixtures, and new furniture.
- g. renovation and expansion - This includes work necessary to renovate and/or expand an asset in order to make it operate as efficiently as possible. It includes modernizing an old fashioned facility, changing the floor plan, or expanding the facility to accommodate more users and generate more revenue.

**Example Maintenance Schedule
for Housing**

<u>Address</u>	<u>Year Const.</u>	<u># of Apts</u>	<u># of Rooms</u>	<u>Area (sq.m.)</u>	<u>Maintenance Required</u>	<u>Cost (000zl)</u>
Location 1	1930	8	24	598	Roofing, Chimney	45,136
Location 2	1958	7	17	480	Roofing, gutters	50,995
Location 3	1965	80	240	4232	Radiators (all)	123,750
Location 4	1937	24	72	1210	Foundation, dampproofing	116,500
Location 5	1973	16	54	418	Windows, ext. paint	67,275
.
.
Location 73	1975	24	64	1125	none	
Location 74	1963	60	120	2550	New central heating	147,500
Location 75	1966	15	38	533	Garbage chute	<u>14,500</u>
TOTAL						3,650,000

Current and Ongoing Maintenance Activities:

<u>Activity</u>	<u>Est. Cost (000zl)</u>
1. New Dumpsters (15)	225,000
2. Staircase painting (30)	180,000
3. Apartment painting (50)	100,000
4. Water pipe replacement	50,000
5. Sidewalk repair (500 meters)	66,000
6. New radiators (250)	150,000
7. New entries & inter.com	175,000
8. Grounds maintenance	47,000
9. Upgrade wiring in all apts.	<u>1,600,000</u>
TOTAL	<u>2,593,000</u>

In this example, the Cost estimate for current and general maintenance necessary to make up for deferred maintenance and ongoing work, in order to achieve a standard level of housing is:

GENERAL MAINTENANCE (1992 prices)	3,650,000,000 zl
CURRENT MAINTENANCE (1992 prices)	<u>993,000,000 zl</u>
SUBTOTAL	4,643,000,000 zl
WIRING UPGRADE (1992 prices)	1,600,000,000 zl
TOTAL	6,243,000,000 zl

The following page presents an example of a five year capital improvements budget.

**HOUSING PROJECTIONS
REPAIRS**

REPAIRS	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Administration							
Computer (2)	0	0	81,000,000	0	0	81,000,000	0
Printer	0	0	40,500,000	0	0	40,500,000	0
Xerox	0	0	27,000,000	0	0	27,000,000	0
Fax machine	0	0	20,250,000	0	0	20,250,000	0
Total Administration	0	0	168,750,000	0	0	168,750,000	0
Equipment							
Lawnmower	0	0	25,000,000	0	0	0	0
Other equipment & supplies			10,000,000				
Total Operating	0	0	35,000,000	0	0	0	0
Maintenance							
Electrical upgrade	0	0	792,000,000	792,000,000	0	0	0
Trucks (2)	0	0	270,000,000	0	0	0	0
Painting	0	0	2,475,000,000	2,475,000,000	0	0	0
Window repair	0	0	0	0	0	0	0
Plumbing	0	0	0	0	0	0	0
Sidewalk repair	0	0	0	0	0	0	0
Boilers	0	0	0	0	0	0	0
Roofs	0	0	0	0	0	0	0
Tools and Equipment	0	0	30,000,000	0	0	0	0
Total Maintenance	0	0	3,567,000,000	3,267,000,000	0	0	0
Total Capital Expenditures	0	0	3,770,750,000	3,267,000,000	0	168,750,000	0

Appendix 5. Changing the System of Employee Benefits from Managing Assets to Managing Costs.

I. Employee Benefits Under the Old System: Under the current legal-economic system in Poland, which evolved under the centrally planned economy, state-owned enterprises provide various non-production related services and benefits of a social, vital, cultural, educational, sport-recreational, municipal and commercial nature. These are activities which require considerable time and resources to manage and operate, and have a cost impact on the enterprise by increasing its expenses and decreasing its profits.

Enterprises provide some services and benefits because of government requirements or incentives such as tax deductions and exemptions. Examples of such types of services include: organizing and subsidizing generally accessible food service in the vicinity of the enterprise or organizing and subsidizing physical education activities.

Other services are provided by the enterprise for lack of an alternative solution or due to the customary practice of providing them. Such services include: subsidizing health clinics near or on enterprise premises where such services are not required by law or regulation, or organizing and financing kindergartens and nursery schools.

Notwithstanding the reason or motivation for providing the service, in most cases, companies do not focus on managing the service and the cost. Rather they generally focus on managing the asset.

Even for those type of benefits which are accounted for in specially established social or housing funds, there is usually no attempt to assure that the funds and rights to use the funds are automatically distributed on a per person basis. For example, actual social and housing assistance is entitled only to those who qualify for it by fulfilling other conditions defined in the law. According to such criteria, some employees may receive a large yearly subsidy, while others may not use the fund for several years, yet both are a cost to the company. As a result of generally low incomes in Poland, this system of dividing resources may remain in place for the next few years as labor unions negotiate changes in the model and means of appropriating funds with the government and the enterprise. For example, negotiations between union and management on the size of vacation allowances for employees.

State-owned enterprises usually subsidize the real deficits and losses of social assets, independent of subsidies for employees entitled to social assistance. These direct subsidies conceal the benefits received by employees from the enterprise-subsidized social asset activity and by others who have no association with the enterprise. The subsidies also conceal inefficient management resulting from the use of obsolete methods of managing the assets and budgets.

II. Employee Benefits in the Future: In a free market economy, it is essential for the enterprise to identify all costs associated with providing a social benefit or service. In the case of social benefits, costs are borne with the aim of ensuring employees certain welfare. The company should consider whether it would be more advantageous to buy the services from an independent firm which specializes in such services, instead of the enterprise providing them.

In market economies, the enterprise ordinarily offers a salary and benefit package per employee. The benefit package includes remuneration, insurance, savings plan, and pension plan. Some also offer vacation savings plans and provide a discount for the use of an independently-operated health club. Perhaps in Poland, it would also be more advantageous for employees if the enterprise, instead of maintaining its own social assets, proposed a concrete vacation program: instead of operating a health clinic, it purchased specific medical services or a private insurance plan for its employees. Exhibit 5-B provides an example of company past and future employee vacation benefits.

Exhibit 5-B.

VACATION BENEFITS

THE PAST

THE FUTURE

- | | |
|--|---|
| <ul style="list-style-type: none"> o Company owns resort. | <ul style="list-style-type: none"> o Employees and other users purchase vacation services; employees receive a company sponsored discount. |
| <ul style="list-style-type: none"> o Assets on company books. | <ul style="list-style-type: none"> o Selling resort reduces company's invested capital. |
| <ul style="list-style-type: none"> o Resort employees on company payroll. | <ul style="list-style-type: none"> o Professional management of resort. |
| <ul style="list-style-type: none"> o Company inadvertently subsidizes non-employee users of resort. | <ul style="list-style-type: none"> o Subsidize only employees. |
| <ul style="list-style-type: none"> o Costs of resort operations buried in operating costs of company. | <ul style="list-style-type: none"> o Isolate and manage costs. |
-

In the course of the three-sided negotiations on the "Pact on State-owned

Enterprises in the Process of Transformation," ("Pact") the government, labor unions and employers came to the conclusion that the main means of solving the problem of employee social services and benefits should be in accordance with a Collective Labor Agreement¹.

It is proposed in the Pact that a Collective Labor Agreement be signed to allow for changing even the principles for determining the means for providing social services, which are defined for an interim period in the proposed Act on the Enterprise Social Benefits Fund.² If the Act is passed it may present a great opportunity for state-owned enterprises which possess social assets to divest those assets and develop a contemporary system for distributing employee benefits, as discussed in section IV of this appendix.

III. Establishing an Employee Benefit Budget: The goal is for the company to determine the amount of funds which could be designated for the employee benefit package, and the means of dividing these funds according to goals and needs. By not recognizing the cost and value per employee, it is difficult to recognize whether the cost of the facility is reasonable, especially if the facility is used by non-employees. If per employee costs are high, it could indicate few employee users and imply that the company could be implicitly subsidizing a facility used by many non-employees. Thus, the company should quantify its costs on a per employee basis. When quantifying benefits on a per employee basis, the company should consider the extent to which these benefits influence an employee's decision to remain in his current position, versus taking a job with another company.

When setting the employee benefit budget, the company also needs to consider how the costs to employees should be determined. Given the manner in which funds have been provided to social assets in the past, it may be most appropriate to determine a budget based on the level of those funds and allocated on a per employee basis. However, the company may also want to develop an asset by asset budget, the basis of which would be whether the facility should be funded centrally by the company (as is often the case now), or recognized as part of the employee benefit package. For example, in market economies, a factory with no easy access to a cafeteria might provide an on-site cafeteria (which may

¹ A Collective Labor Agreement is an agreement intended to serve workers employed in enterprises in a given branch or profession and is negotiated between three parties: the founding body, the labor unions, and the enterprise. The agreement defines, among other things: employee salary and wage conditions and the principles of awarding other work-related benefits; employment conditions related to a given branch of work; employee rights in relation to the type of work performed; and the principles and forms of ensuring safe work conditions and personal security on the job in accordance with regulations and other social-vital services. While the content of a Collective Labor Agreement must be in accordance with the law, it allows for greater flexibility in defining workers' rights than is provided under current regulations.

² The Act on the Enterprise Social Benefits Fund (a component of the Pact) is a proposal that foresees enterprises, over the course of five years from the date the Act comes into effect, renouncing the establishment of the Fund and developing alternative means for providing employee benefits through the negotiation and signing of a Collective Labor Agreement.

or may not be subsidized), an office in the city center may provide coupons for discount meals at a local restaurant, or take account of local food prices when setting salaries. Another example, would be the company deciding, over the short-term, to maintain certain employee facilities which provide a community benefit, until the facility is made either self-sustaining or the community takes-over operations.

Finally, when determining the benefit per employee, the company must consider whether the true cost of using the facility is the most appropriate figure. If it is determined that a sports stadium should remain open, in the short-term it may have no users if they must bear the full cost burden. Implicitly the decision is made that the long-term need for a stadium is greater than the short-term cost of continued operation and subsidy.

IV. Allocating the Employee Benefit Budget: Once management sets an employee benefit budget, it will need to decide how to allocate that budget among the various facilities.

It is recommended that management consider the preference of employees in the allocation decision. It is possible to develop a relatively structured process for allocating its employee benefit budget to each employee individually and letting the employee decide where to spend the subsidy. For example, if each employee receives a yearly benefit subsidy of a fixed amount, the company could ask each facility management to provide a "package" worth that amount and the employee would decide which package to choose. Once all employees had decided on their benefit package, the facility would know what its subsidy from the company for the year would be. Any shortfall of funds would be the responsibility of facility management and would have to be made up from additional users, sponsors or other options.

A more sophisticated approach would be to let the employee split his benefit among facilities. Each facility would offer a package, or variety of packages. The employee could then purchase whatever combination of packages he chooses up to the employee benefit subsidy. In addition, if he wanted additional services from a facility, he could purchase those services out of his personal income.

In all cases where it is decided to let employees "purchase" services at their discretion, it will be helpful to calculate both the appropriate share of the cost of providing the services (as discussed herein) and the free market value to the employee (i.e. how much after-tax income is needed to purchase a service on the free market at the level required). It is important to recognize that if the employee can purchase the benefit on the free market for lower cost, it may be more appropriate for the market to provide the benefit. For example, it may be more expensive to maintain an unattractive holiday resort, than to let employees use their holiday benefit at an attractive and less expensive location of their choice. In this situation, an analysis of the costs and benefits would show that the full current cost of the benefit need not be transferred (i.e. not the full cost of the unattractive resort, but only the free market cost of the holiday benefit). In other cases, the opposite may be true, the free market cost of a benefit may be greater than the value of the benefit provided through the company. For example, for a company location in the city, providing low cost meals (where they are not required by law) because nearby cafeteria are expensive.

Appendix 6. Legal Overview of Ownership Forms¹

As has been discussed, it is recommended that all social assets be separated from the operating company in order to more effectively account for the assets revenues and expenses, encourage responsibility of operations by asset managers, and prepare the asset for eventual privatization. The following are the various ownership forms a company has available to it with respect to social assets.

Profit Center in the Company: The company may decide to maintain the status quo. The primary advantage to this is that there are no costs involved in creating a new legal entity, transferring the assets, or operating costs associated with a new entity. This alternative may not affect employees and unions who may disagree with other alternatives. The disadvantages are that the productive and non-productive assets are still commingled, although the company could decide to account for them separately. The company remains directly responsible for operating and maintaining assets, and the time and expense of managing the asset may be utilized more efficiently in the company's line of business.

Limited Liability Company ("LLC"): The company may decide to transfer the ownership and control of the social assets into a limited liability company ("LLC") created for that purpose. It is strongly recommended that an LLC be used as it is an advantageous form since there are no taxes associated with the transfer. An LLC is established under the Commercial Code, Articles 158-306. According the Ordinance of October 9, 1992 (Journal of Laws, No. 78, Item 396), the enterprise is exempt from taxes on the transfer of assets to the LLC. Following are some highlights of the law on LLCs.

Art. 158

1. LLCs may be formed for economic purposes by one or more persons.

Art. 159

2. The initial capital shall amount to, at least, forty million zlotys.

Art. 160

Requirements to form a LLC

1. execution of a deed of company formation;
2. contribution of the entire initial capital;
3. appointment of the company bodies;
4. registration in the commercial register.

¹ The following discussion is based on Polish law as of November 1992. It is not intended to be comprehensive, but only an overview of the important aspects of the law. As Polish law is changing rapidly, it is recommended to consult with an attorney before proceeding with any option.

Art. 162

1. The deed of company formation must be executed in the form of a notarial deed, otherwise being null and void.
2. The deed of company formation shall specify:
 1. business name and seat of company;
 2. objects of the company's enterprise;
 3. lifetime of the company, if the lifetime is limited;
 4. value of the initial capital;
 5. whether a shareholder may hold one or more share;
 6. number and value of shares held by individual shareholders.

Art. 163

1. If a shareholder contributes non-cash assets towards the company, the deed of company formation must state the shareholder, the number and value of shares he has been allotted instead.

Art. 166

The company must be registered in the commercial register

Art. 206

1. The deed of company formation may establish the supervisory board, the board or auditors, or both.
2. In companies whose initial capital exceeds the amount of 250 million zlotys and the number of shareholders is over fifty, the supervisory board or the board of auditors shall be established.

Joint-Stock Company: A joint-stock company is generally not a favorable form for many social assets because of the strict reporting requirements associated with it, the required size of the company (minimum founding capital of one billion zloty), and a required supervisory board. Joint-stock companies should be considered only in situations in which the asset is of sufficient size, will need to raise capital in the capital markets, or has the resources to meet the reporting requirements. Furthermore, an enterprise undergoing the privatization through liquidation method, by owning a joint-stock company could incur difficulties.

Cooperatives: The principals of creation and activities of cooperatives are regulated by the Law on Cooperatives of 16 September 1982, [Journal of Laws, No. 30, Item 210, with later changes]. Housing cooperatives are regulated by Articles 204 - 239 of the above law. The cooperative needs at least 10 natural persons to be established through the mutual declaration of intent, it is a voluntary and self-governing association, and can have an unlimited number of members. The aim of the housing cooperative is to fulfil the housing needs of its members and its families as well as the cultural needs that result from living

in a cooperative. In order to satisfy the housing needs, the cooperative can give (apportion) the apartments to the members of the cooperative or build individual housing. The statute should state in which way the housing needs of the members are satisfied. The cooperative can take over buildings and manage them although the cooperative is not the owner of them as long as it is economically and socially justifiable [Article 204]. Each member of the cooperative is entitled to only one apartment, including couples. An legal person which is a member of the cooperative is not entitled to an apartment. See Appendix 12 for an in-depth review of the housing laws.

Foundation: A foundation is an institution that operates for a specific social or economic "useful" purpose. In particular, protection of health, promotion of economy and science, education, culture, social welfare, and protection of environment and monuments. Foundations can be established by any legal or natural person, either Polish or foreign. Foundations can engage in economic activity only within the scope that encompasses the goals of the foundation. If the foundation engages in economic activity the value of the assets of the foundation cannot be less than 10 million zlotys. A foundation is the most convenient form of organization to finance non-profit social assets since the foundation incurs no tax on accepting gifts, inheritances or transfers of assets from other economic entities.

When the goal of the foundation is achieved or the asset depleted, the foundation is liquidated. The person who established the foundation and contributed the capital, cannot in the future take back the assets or decide to use the assets for a different purpose. When the foundation is established by Notary act it cannot change its mission and the person who established the foundation cannot take profits or assets from the foundation. It is unnecessary to pay the notary or court fees for the transfer of the property. The foundation is managed by a managing board and is supervised by the Minister proper to the purpose of the foundation.

The principals of creating and activities of foundations are regulated by the Law on Foundations of 6 April 1984 [Journal of Laws of 1991, No. 46, Item 203]. According to the law, there is no tax on a foundation accepting gifts, inheritances or transfers of assets from other economic entities. The gift and inheritance tax and income tax (article 17 of the Corporate Income Tax Law of 15 February 1992, 1.1.4) are not applicable to foundations.

Association

The principals of creating and activities of associations are regulated by the Law on Associations of 7 April 1990; amended 23 February 1991.

The Law defines an association as an autonomous, benevolent and non-profit organization. This differentiates associations from companies or cooperatives and makes them similar to foundations. The main difference between an association and a foundation is that associations are corporations of people rather than assets.

Establishment of an association requires the following steps:

- o adopting a statute of association and forming a founding committee;

- o filing an application with the Court to register the association;

The number of founders should be no less than 15. If the number of members (not necessarily founding members) of an association falls below 15, it is automatically dissolved. Legally, the local administration supervises associations. However, the local administration does not interfere in the activities of the association.

An association may engage in economic activities. However, the income gained from those activities must be used for the statutory purposes of the association and cannot be distributed among members.

The table below presents a comparison between a limited liability company and a joint-stock company.

LIMITED LIABILITY COMPANY	JOINT-STOCK COMPANY
<p>I. CAPITAL</p> <ol style="list-style-type: none"> 1. The initial capital shall amount to no less than forty million zlotys. 2. Par value of shares must be at least 500,000 zlotys. 3. The initial capital may be contributed in cash or in kind. The shareholders shall evaluate the in kind contributions. 4. The shares shall be covered to the total value thereof prior to the registration of the company. In practice, the shareholders submit a statement to the Court of Registration that the initial capital has been paid. Opening the corporate bank account and payment the initial capital takes place after 	<p>I. CAPITAL</p> <ol style="list-style-type: none"> 1. The share capital of a company shall amount to at least one billion zlotys. 2. Par value of shares must be at least 10,000 zlotys. 3. The share capital may be contributed in cash or in kind. The shareholders shall evaluate the in kind contributions. 4. The shares issued in return for in kind contribution shall be covered to the total value thereof prior to the registration of the company. Shares issued in return for cash contributions shall be paid for at least one fourth of the nominal value thereof. The outstanding contribution shall be paid by the end of fiscal

LIMITED LIABILITY COMPANY

the company is registered.

5. Only registered shares are allowed.
6. The company may be set up by one (sole) shareholder.

II. COMPANY'S BODIES

1. The Board of Directors

The Board of Directors may manage the ordinary affairs of the company.

The Board of Directors shall represent the company before and beyond the court.

The right of the Board of Directors to represent the company shall encompass all judicial and extra judicial acts connected with running any trade enterprise, not excluding the transfer or encumbrance of immoveables, appointment and revocation of commercial representation (proxy).

Other competencies than above may be given to the board by the Articles of Association.

2. General Meeting of Shareholders

The presence of a notary is required only if the resolution on changing the articles of association is to be adopted.

JOINT-STOCK COMPANY

year.

5. Shares may be issued as:
 - o registered shares.
 - o bearer shares.
6. No less than three founders are required to set up

II. COMPANY'S BODIES

1. The Board of Directors

Same as LLC.

2. General Meeting of Shareholders

The presence of a notary is required at any Shareholders' Meeting.

LIMITED LIABILITY COMPANY

General Meeting of Shareholders adopts the resolutions in the following subjects:

- o consideration and approval of the annual report, the balance sheet and profit and loss account for the preceding year and acknowledgement of the fulfilment of duties entrusted to the company's bodies,
- o any decisions relating to claims for redressing injuries inflicted during the company formation or in exercising administrative or supervisory duties,
- o reimbursement of additional payments,
- o any amendment to the deed of company formation,
- o dissolution and liquidation of a company.

The Shareholders Meeting may adopt resolutions on other issues vital for a company. Eg., the articles may provide that the Shareholders Meeting adopts resolutions on appointment of auditors.

An ordinary meeting shall be held within four months after the end of each fiscal year.

3. Supervisory Board **(not mandatory)**

In companies whose initial capital exceeds one billion zlotys and more

JOINT-STOCK COMPANY

Same as LLC (plus issuing of bonds).

An ordinary general meeting shall be held within three months after the end of each fiscal year. The company's articles may provide extension of the meeting by one month.

3. Supervisory Board **(mandatory)**

LIMITED LIABILITY COMPANY

than fifty shareholders, a supervisory board must be established.

The supervisory board shall exercise permanent supervision over the activities of the company performed by all the branches of its enterprise.

Special duties shall include:

review of balance sheets and the profit and loss accounts with respect to compliance thereof with both the books and documents and with the actual state of business,

review of the Board of Directors' report and business activity proposals for distribution of profits and coverage of losses, as well as presentation to meeting of shareholders of the annual written report on the results.

III. RIGHTS AND DUTIES OF SHAREHOLDERS

The deed of company formation may obligate the shareholders to make additional payments within the numerically specified amount in proportion to the shares.

IV. TAXES

Rate of corporate income tax: 40%
Rate of turnover tax: depends on the type of services rendered or goods sold.

JOINT-STOCK COMPANY

Same as LLC.

III. RIGHTS AND DUTIES OF SHAREHOLDERS

Same as LLC.

The company may issue preferential shares with special rights attached. These shares should be expressly specified in the company's articles.

The preference may concern the right to vote, dividend and distribution of assets in case of the company's liquidation.

IV. TAXES

Same as LLC.

LIMITED LIABILITY COMPANY

JOINT-STOCK COMPANY

V. DISSOLUTION AND LIQUIDATION OF THE COMPANY

V. DISSOLUTION AND LIQUIDATION OF THE COMPANY

The dissolution of a company shall be caused by:

- o reasons provided for by the deed of company formation,
- o resolution of shareholders on dissolution of the company or transfer of the company's seat abroad, the said resolution to be certified by a notary, otherwise null and void,
- o declaration of the company's bankruptcy,
- o merger of companies,
- o court's order on request of a shareholder or member of company's bodies eg., if the shareholders who are equal number of shares may not reach consensus and on request of General Public Prosecutor's Office of Poland, if the company acts to the prejudice of the interest of the State by violating the law.

same as ltd. company

The company may not be dissolved neither by the Court nor by the Public Prosecutor, even if the company acts in contrary to the interest of the State.

Appendix 7. Ownership Options and Facilitating Changes in Ownership

Ownership Options:

When selling or transferring a social asset from the management and control of the company to an independent entity there are a number of ownership options the company may choose from. These options, discussed below, present the range of possibilities. Certain options may require founding body approval and/or have significant tax consequences. The reader is advised to use this appendix as a reference guide and refer to professional legal counsel before taking action.

1. Employee Ownership and/or Lease: The company may decide to sell, transfer ownership or lease the assets to the employees who currently run it. Such a transaction would give the asset employees an opportunity to participate in the financial success of the company through dividend payments from operating profits. The issuance of shares to employees also provides a profit incentive to increase service quality and productivity, enhancing the ability of the asset to attract customers outside of core company employee users.

Depending on the size of particular assets and the financial capabilities of the employees, they could either exclusively own the new "asset company," operate through a lease/purchase agreement, or straight operating lease. If initial employee ownership was less than 100%, the enterprise, through negotiated agreement with employees, could over time, transfer its remaining holdings to employees based on achieving yearly profit, usage, or other targets.

2. Joint Venture: It may be desirable for the company to enter into a joint venture agreement with an outside investor to operate the assets. Shares could be offered to the joint venture partners in return for their capital investment in the asset. The employees could also enter into the joint venture agreement.

3. Third Party: The company may decide to sell the assets to an independent third party. In general, the transfer of assets would be through sale to another legal entity, and would probably encompass business or profit oriented assets. However, for other assets, such as municipal, or social activity assets, the transfer may be for free or some tax concession to a non-profit or government entity (i.e. transferring the schools to the Gmina).

4. Pooling Assets: In certain circumstances, it may be attractive to pool assets with other companies (either in the same industrial sector or region). The legal entity created to manage these assets would be a "fund" that would receive the assets as an in-kind contribution (in the case of a company) or a transfer (in the case of a foundation). The purpose for pooling assets would be to make the assets more attractive to an outside investor, achieve economies of scale or increase utilization of the asset. Professional managers, would be identified who would ideally be experienced in managing that type of asset.

Due to the potential scale of the asset groupings (such as an entire industry sector)

managers might be attracted from industry participants in that sector (such as the resort managers). These managers may also have access to needed foreign capital interested in investing in Poland. It is conceivable that the manager could be charged a fee to participate in the group. In return for the payment of a fee -- capital injection -- the manager would gain an equity stake in the asset pool. That stake would encourage further direct investment, continual upgrade of services and physical plant, active marketing efforts and expense and personnel controls. In addition to compensation based on equity, the manager would also enter into a management agreement for base compensation, possibly based on profit, usage or other pre-agreed targets.

The principal duty of the manager would be to exert management skills and experience over the operations of the asset group to maximize the value of the shares of the group. The manager should sit on the board of the asset group, acting in the role of commercial advisor. All business plans and the implementation of business plans would come from the manager.

Provisions can be made for asset employees to participate in the pool as well. An amount equal to 10% of total shares, for example, could be reserved for employees, and given to them free of charge, in proportion to wages earned.

As a continued incentive to the manager, it would be desirable to set forth, at the outset of the creation of the group, the potential reallocation of shares over the life of the engagement of the manager. This allocation would include provision for acquisition of further shares -- either as direct compensation for profit hurdles achieved, as compensation for further capital investment or available at a discounted price as an inducement to expand the initial investment.

Further percentages, or the creation of classes of shares, could be derived for future allocation and/or distribution to:

- a. local investors, as direct equity participants;
- b. incentive compensation for employees and or Boards of Directors;
- c. public investors, ie, The Warsaw Stock Exchange;
- d. employee purchases.

Ideas to Facilitate Changes in Ownership¹

The ideas discussed below present a few concepts that could make selling a

¹ The examples presented are options that have been tried in other countries. Poland may not have specific experience with a particular example and the legal code could present certain difficulties. However, the proposals are designed to encourage readers to develop new and innovative solutions.

company's social assets more attractive to investors. The concept of pooling may be particularly applicable in the case of resorts. The second concept, shared equity purchase, can be applied most readily to housing, but could also be applicable to smaller company commercial assets, such as stores. In all cases, (especially housing) funds from the privatization of the operating company could be set aside to help finance the asset over a transition period. For example, if an investor believed the value of the company was greater without the its housing obligation, the difference between the value of the company with and without housing could be the basis for a so-called "housing transition fund."

1. Pooling Resorts: The pooling concept may be particularly attractive with respect to resorts. According to a review of social assets owned by companies in Poland, over 50% own resorts. In many cases the resorts are small, lack capital and need improvements. While employees may be interested in owning them, they may not be able to afford the capital needs. Additionally, there may be a lack of outside investors interested in a single small resort. If 500 to 1000 rooms in resorts were pooled, large industry participants might be attracted to invest. While these operators may not be interested in one or two 40 or 50 room resorts, they might be interested in 10 to 50 resorts which would provide market share and the opportunity to franchise. Companies in a sector or a region could pool their resorts and open a competitive bid to such investors. Employees of the resorts could also be provided an ownership stake as discussed above.

Additionally, since resorts offer an employee benefit, by pooling its resorts with other companies, those companies could than limit employee subsidized vacations to resorts in the "Resort Group," and thereby more clearly define the subsidy necessary for operating these resorts. In this instance, the LLC should have a supervisory board.

Resorts could also be pooled in a gmina located in a desirable tourist or recreational location. The gmina would hire a professional manger to operate the resorts, but would retain ownership control, thereby allowing it to develop a tourism plan for the region. For example, rather than let independent operators build unattractive facilities before building codes and a tourism plan can be established, the gmina would control development, thus insuring a certain standard of quality.

2. Pooling Assets in Communities: Beyond resorts, other social activity assets could also be pooled to increase the utilization rate of the facility. As discussed under employee benefits, certain facilities could offer their services to employees of other companies in the community. Those facilities which receive substantial use by non-employees, for example, sports facilities or culture houses, could be pooled with the facilities of other Companies in the community and share the costs. The employees could than decide to use the facility most convenient to the location where they live. Such a combination would allow facilities that previously competed with each other to be combined or closed, while the overall availability and quality of remaining facilities would be increased due to cost savings and economies of scale.

3. Shared Equity Purchase: Another purchase option directed at individual social assets, particularly housing, is the concept of shared equity purchase. The company would sell its housing to another legal entity (i.e. cooperative or limited liability company). The tenant would, over time, purchase a percentage of his apartment from this "housing

company" (i.e. 10%, 20%, 30% etc.) and the housing company (under ownership by the operating company) would own the remaining percentage of the apartment. It is intended that the tenant would eventually purchase the remaining equity in the apartment. Shared equity purchase is advantageous in situations where the difficult economic situation of the tenant may prevent him from handling the burden of purchase through monthly instalments. Shared equity would allow the tenant optimal flexibility to eventually purchase while continuing to pay "rent" to the company on the remaining company owned equity. Within this "joint agreement" the tenant assumes responsibility for all aspects of the home as if it had been fully purchased.

The option has all of the advantages of privatization together with the opportunity to attract a wider market than straightforward tenant purchase. This is particularly attractive in the case of housing, where tenants may have lower incomes or are reluctant to take on the full commitment of purchasing their apartment.

This could also be an attractive option for social assets which asset employees would like to own and operate. In circumstances when the employees lack sufficient capital to purchase the whole asset through an employee ownership plan, a shared equity purchase could be set up. It is usual and desirable to permit the tenant or operator (employee) to purchase the remaining rented proportion either through an agreed upon time schedule or as their inclination or financial capability permits.

Voluntary Transfer of Housing: Under this option there is a large-scale transfer of homes, typically an apartment block or a neighbourhood grouping of blocks, to a new owner -- a "housing association" or non-profit entity with management representation from the company and tenants (and possibly the Gmina). A fundamental requirement for this option to be successful is the need for rents to rise after the transfer to cover both the cost of the transfer and to service loans raised to finance repair and improvement works.

A non-profit housing association is a body which may be a specialist limited liability company, association or foundation. Any profit received by the company cannot be distributed by way of dividends to shareholders, it must be reinvested in the core activities under the statutes which govern the company.

The advantages of transfer are:

- o rents are removed from government control and able to increase as necessary;
- o the purchasers have more control of their destiny;
- o the transfer reduces pressure on the company for repairs expenditure;
- o the equity in the transferred properties provides security against loans to finance repair and improvement work.

The key points of voluntary transfer is that it must have the support of the tenants and the unions, and the company must be prepared to transfer at a price which ensures the

continued financial viability of the housing association and reasonable rents for tenants.

Trickle Transfer of Housing: A variation of voluntary transfer in which homes are transferred to a housing association as they become vacant.

This idea does not require tenant involvement and is particularly suitable as a means of demonstrating the practicality and advantages of voluntary transfer as well as offer the advantages of transfer detailed above. Trickle transfer will take longer to accomplish. However, it could be accelerated if residents who are hesitant to voluntary transfer or ownership are encouraged to move to vacated apartments in other buildings so as to more quickly vacate smaller buildings which could than be transferred in whole to the "housing association."

Appendix 8. Operating Options

The options discussed in this appendix are intended to assist company management in determining the appropriate operating structure for the asset. These options should be considered when the outright sale or transfer of the asset is not feasible and the company continues to own the assets, either for the short-term or the long-term.

In all cases the company remains the owner of the asset, which will be reflected in the balance sheet of the company.

- a. Operate Directly. Under this scenario, the company would continue to own and operate the asset as it has historically. The asset would continue to be represented in the fixed asset accounts on the balance sheet, and as a source of revenues and expenses on the profit and loss statement. Operations and funding for the asset would remain the responsibility of the company. One advantage of this scenario is that the company need not take any legal actions or change the management structure of the asset. The disadvantage is that there may be no incentives to encourage accountability of the asset, unless it is formally separated from the company, and management must take an active role in developing a system of accountability for asset operations.
- b. Lease. Under this scenario, the company would continue to own the asset but would lease it to a third party or asset employees. The lessee would pay an agreed upon lease payment to the company and retain revenues generated from the asset. Expenses for operating and maintaining the asset would be the responsibility of the lessee, unless otherwise stipulated in the lease agreement, although the company would retain ultimate financial responsibility. The advantage of this scenario is that the company removes itself from the responsibility of operating the asset as well as its associated expenses (if so agreed in the lease agreement). The company also receives revenues from the lease contract. The disadvantage is that the company retains ultimate responsibility for the asset. If the lessee should fail to perform, the company may remain financially and operationally responsible.
- c. Management Contract. In circumstances when outright sale or transfer of asset are not financially feasible, such as with money-losing or underutilized assets, a management contract is a possible option. Such a contract is concluded between the enterprise and a management group, possibly selected through tender or other competition. The contract is executed for the operation of the asset and the improvement in providing the services of the facility. The management group may comprise different entities such as consulting firms, banks, professional managers or others. As opposed to a lease, the management group does not pay a fee for operating the asset but is compensated for its work based on the contract. The company retains profits realized from the asset.

Advantages to this scenario are that gains can be achieved by bringing in aggressive private managers who will operate the assets like a private firm,

even if ownership remains with the company. Establishing a contractual arrangement can facilitate later sale or transfer, while, in the near term, improving service quality and management skills. In effect, management becomes privatized, without the initial effect of privatizing the assets under management's responsibility. Disadvantages are that losses, unless specifically cited in the contractual arrangements, are borne by the company, although the company has relinquished day-to-day control of asset operations.

Considerable experience in the use of management contracts in market economies has made routine, contract negotiation and monitoring clauses in such contracts.

The contract arrangement should be written so that capital expenditures and investments are the responsibility of the management group, costs are to be reduced, and that the management group is responsible for attracting needed outside financing. Furthermore, the management group should be required to preserve and enhance existing assets according to an agreed upon maintenance schedule, as well as provide training for local counterparts. Ideally, the contractual party would be a joint foreign/local enterprise, with the foreign partner providing essential technical and managerial expertise. It is possible that asset employees would be interested in joining such arrangements.

Contract Considerations*

The company must consider the need for formal contracts and contracting procedures before entering into any leasing, concession or sales agreement. General contract terms should be stated, specific terms will be project dependent. Some contract considerations include:

- 1) Cancellation and penalties.
- 2) Capital improvements.
- 3) Compliance with environmental regulations and safety standards.
- 4) Employees.
- 5) Equipment -- current contribution and new.
- 6) Incentives for profitable or efficient operation.
- 7) Key personnel.
- 8) Length of contract.
- 9) Liability issues.
- 10) Insurance needs.
- 11) Ownership and ownership transfer.
- 12) Performance criteria.
- 13) Rates or fees and rate increases.
- 14) Reporting requirements to company.
- 15) Risk sharing.
- 16) Taxes.

* David, "Privatization: Steps to Successful Implementation"

Appendix 9. Steps for the Separation and Sale of Enterprise Property.

This appendix outlines the necessary legal and other recommended steps to sell enterprise property.¹ Section I and II apply generally to all assets. Sections III and IV are written specifically for the sale of enterprise owned housing. However, the concepts can also apply to the sale of other social assets.

I. INTRODUCTION

The activities of state-owned enterprises are regulated by the law of 25 September 1981 on State-Owned Enterprises (Dz.U. 1991, No. 18, amended Dz.U. No. 75 and 107) and by the Law of 31 January 1989 on Financial Management of State-Owned Enterprises (Dz.U. 1990, No. 26 and 89 and 1991 No. 75).

Ownership rights of state-owned enterprises with regard to their assets are regulated by the Law of 29 September 1990 on Amendment to the Law on Lands and Real Estate (Dz.U. No. 30, No. 83, No. 103, No. 107).

On these grounds, lands owned by the State Treasury that had been managed by state-owned enterprises on 5 December 1990, became, as of this date, subject to the perpetual right of use. However, the enterprise was given the full option for ownership to buildings located on these lands. Ownership may be obtained by the enterprise proving it erected its buildings out of its own resources, in which case acquisition of title to the buildings is free of charge. If the enterprise did not pay the full cost of construction, it must pay those construction costs it did not cover in order to gain title.

II. LEGAL STATUS

Enterprises' right to dispose of its assets

An enterprises' right to dispose of assets is regulated under the Civil Code, Articles 44, 55, 136, 140, 233, and under the Law of 25 September 1981 on State-Owned Enterprises (Dz.U. 1991, No. 18, Item 80).

Pursuant to Art. 46 Item 2 of the Law on State-Owned Enterprises, state-owned enterprises manage the assets assigned to them, and may sell some of their fixed assets via tender (Art. 46 Par. 3). Principles of tenders are set forth by the Regulation of the Council of Ministers of 25 June 1990 (Dz.U. No. 35, Item 260).

Any intention to dispose of fixed assets including:

- o contributing the assets to a company;
- o donating the assets; or
- o allowing other enterprise's free use of the assets

¹ When a step is legally required it is noted in the text, otherwise, the step is a recommendation.

must be notified to the founding body, which within one month from such notification may express its disapproval. In addition, except in limited circumstances (for example, the sale of housing to residents)², the sale of any company assets must be by tender. The enterprise can also donate or contribute the assets to another company.

If the founding body rejects the enterprise's disposition plans, the enterprise may file an appeal on the grounds of Art. 63 of the Law on State-Owned Enterprises.

If the enterprise does not observe the tender or notification procedures or disobeys the Founding Body's disapproval and disposes of its fixed assets, any contracts and agreements entered into by the enterprise with respect to these assets are legally null and void.

III. PREPARATION TO SELL ENTERPRISE APARTMENTS

A. Obtain/Clarify Legal Titles

Before preparing to sell any fixed assets it is legally necessary to get full clarification of legal ownership titles and obtain a complete set of documents that will subsequently be necessary to transfer the ownership (notary, court, etc.). See Appendix 10 for samples of different forms of documents.

B. Conduct a Valuation of Assets to be Offered

After clarifying the legal status and ownership titles of property, it is legally required that the enterprise value the assets based on guidelines on "tender procedures in selling fixed assets", (Regulation of the Council of Ministers of 25 June 1990, on Tender Procedures in Selling Fixed Assets by State-Owned Enterprises - Dz.U. No. 45, Item 260). Paragraph 5 of this regulation stipulates that state-owned enterprises must prepare valuations of their fixed assets taking into account current market prices. Moreover, valuations must be performed by a valuation expert who has been certified.

C. Set the Offer Price

In certain circumstances of sale through open tender, a valuation is not required. However, if a valuation is required or performed, an offer price must be set for the sale of the asset.

- 1) With respect to most social assets, a valuation can be performed by an expert and the asset sold or transferred to another legal entity. However, with respect to the sale of apartments, the value will also be determined by the fact that even if an apartment is sold or transferred to a third party, the current residents cannot be evicted (See Appendix 11, Tax Implications and Appendix 12, Housing Review). Thus, an occupied apartment, lacking

² A few commentators believe the sale of housing to residents is not necessary through tender, others disagree. See Appendix 12, Housing Review, Section I.C.4.(7).

immediate availability and equipped with tenant, cannot be valued as high as a freely available apartment on the market.

- 2) Fixing a price of the "perpetual usufruct" that is sold with the asset is not difficult: such a price should be no lower than the one that was mentioned in the decision confirming the acquisition of the land by the enterprise.

D. If the Company Retains the Status of a State-Owned Enterprise, Obtain Consent of Workers' Council/Trade Unions (This is not necessary for commercialized companies, although it is recommended.)

- 1) It is necessary to consult with the workers' council regarding:
 - o the decision on the envisaged sale of apartments or other assets;
 - o conditions of sale - including all types of preferences.

Workers' council approval should be duly documented, e.g. by adopting a resolution of competent bodies.

- 2) Consent from the workers' council or unions should also include documentation elaborating on the rules and procedures of sale. The appropriate document ought to be prepared by the workers' council or at least with their participation and consulted with the trade unions within a given enterprise.

The objective of this is not only to observe the rights of the workers' council and trade unions, but also to ensure consensus and a smooth sales process.

The success of any sales program will depend upon the co-operation and consent of workers' representatives.

E. Define Enterprise Responsibility to the Founding Body

Providing preferential sales offers for any group of tenants would demand a "tacit acceptance" on the part of the founding body (usually a Ministry), on the grounds of Art. 46a of the Law on State-Owned Enterprises. Preferential prices do not result from any legal provision but is a form of "donation". In such a case, the founding body must be notified and has one month from notification to express its disapproval of the plan. Lack of response is considered as approval.

F. Establish Management Entity

It is not required to separate the asset from the company before it is sold. For example, apartments could be sold to the residents directly from the company. However, it is generally recommended that before any sale is executed, the asset be separated from the company and transferred to a new management entity, for example, a limited liability company, joint-stock company or cooperative, established for the purpose of operating and managing the assets being sold.

G. Establish Management Contracts

If a new management entity has been established, it is necessary to create a management contract that spells out the agreement between the new management or company and the enterprise contracting the services. The agreement would be a commercial arrangement under the civil code and ancillary regulations.

H. Determine Tax Contingencies

See Appendix 11

I. Decide on a Financing Plan

Although not necessary, it is recommended that a specific financial arrangement be elaborated, outlining the terms of sale and other issues or special terms, such as instalment payments, indexation of instalments, etc. It is important that financing arrangements, particularly with respect to selling housing, be designed in such a manner that it is relatively easy to communicate the terms of sale to recipients of the offer.

J. Prepare Promotion Materials Explaining Rules and Procedures of Sale

The only legal requirement for promotion is that tenders be publicized in a daily newspaper and posted in a place where all employees can see. However, it is recommended that other promotional information about the sale be prepared. Some issues to consider when preparing promotional material include:

- 1) An information booklet should be prepared advising the tenants on the procedure of filing their applications. They should be allowed at least 30 days from obtaining the information to make a decision.
- 2) The information booklet should contain the following:
 - o deadline for filing the applications to purchase;
 - o price per 1 sq.m of the usable space;
 - o terms of payment: total price to be paid on concluding the transaction or advance payment with subsequent instalments (specifying the period, interest rate, mortgage, etc.);
 - o who covers the costs of the transaction, including legal charges of transferring ownership and signing the mortgage agreement; for example, the enterprise may pay the costs of valuation and notary fees (transfer of the title), and the buyer, the costs of mortgaging the apartment.
 - o preferential terms granted to groups of current tenants;

- o preferential payment terms for cash sales;
- 3) In order to facilitate the preparations for sale, it is useful to prepare and make the appropriate forms available for all tenants. These forms should include: name and address of the tenant, size of apartment, location, preferences entitled to, type of payment (cash or instalments) and type of collateral (mortgage, lien, IOU, etc.). Forms should also contain space for other suggestions from the tenant and more importantly an acceptance clause as to the price and other terms (sharing costs of transaction, etc.).

IV. PROCEED WITH THE SALE

A. Sale of Unoccupied Apartments

Sale of unoccupied apartments may be held via an open tender or tender to a pre-selected group of people (for example, employees).

For tenders limited to employees, all employees should be invited, including those who already live in enterprise apartments but who may wish to move to a higher quality or larger apartment.

The tender procedure should follow the rules referred to above (Regulation of the Council of Ministers of 25 June 1990 on Rules of Organizing Tenders (Dz.U. No. 45, Item 260)).

Prior to beginning a tender the following information should be publicly available:

- o price per square meter;
- o number of square meters in a given apartment, its location, equipment and facilities if above standard;
- o date of closing the tender;
- o deposit required if purchase is through instalments. For example, 10 % of the mortgage price;
- o payment alternatives. For example, cash discounts, instalment payment requirements, type of collateral required, etc.

B. Sale of Occupied Apartments

- 1) Pursuant to the Art. 5 Pt. 2 of the Housing Law, a self-contained housing unit, i.e. one that can be subject to a separate ownership title and thus to sale, is defined as a grouping of rooms and ancillary facilities that do not require usage of other rooms or facilities located outside the unit.
- 2) Whenever there is more than one tenant legally assigned to a given unit, such unit cannot be sold until this situation is clarified.
 - o If the tenants in question are married, the sale is performed for the benefit of both.

- o In all other situations, an apartment cannot be sold before the tenant not benefitting from the sale is assigned to a different apartment.

C. Eviction

See Appendix 12

D. Charges and Fees Related to the Transfer of Ownership Title

1) Notary fees:

determined by the Regulation of the Minister of Justice of 12 April 1991 on Notarial Fees (Dz.U. No. 33, Item 146).

Pursuant to Art. 2 Item 1, the maximum amount of allowable fee is:

up to 3 % - when the value is no higher than 100 mln zł;
3 mln zł and 2 % - on the excess over 100 mln zł up to 200 mln zł;
5 mln zł and 1 % - on the excess over 200 mln zł up to 500 mln zł.

Note: These are the maximum figures allowed by law as of September 1992 and are subject to change. Notary fees may be lower depending on specific agreement between notary and interested parties.

2) Stamp duty:

determined by the Regulation of the Minister of Finance of 2 October 1991 (Dz.U. No. 90, Item 405).

Pursuant to Par. 57 Item 1 Pt. 1, sale of real estate or right of perpetual usufruct is subject to a stamp duty equal to 5 % of the value.
Establishing mortgage costs 0.1 % of the value (Par. 72 Item 1 Pt. 1).

3) Court fees:

determined by the Regulation of the Minister of Justice of 10 September 1991, (Dz.U. No. 85, Item 390).

Pursuant to Par. 32 Pt. 1, entry into the mortgage register is subject to 1.6 % of the value (Par. 31 Pt. 2).

4) Other charges

There is a charge for copies and extracts of notarial deeds (according to Par. 1 of the Regulation of the Minister of Justice of 13 March 1991 on Fees in Civil Proceedings; Dz.U. No. 32, Item 135; amended: Dz.U. No. 81, Item 358).

Appendix 10. Sample Documents¹

(Załącznik 10. Przykładowe dokumenty)

**WZORY DOKUMENTÓW WYMAGANYCH DO
USTANOWIENIA FUNDACJI, UTWORZENIA SPÓLDZIELNI
I SPÓŁKI Z O.O.**

¹ Excerpted from, Teresa Elmerych, Jak przekształcić zakładową bazę socjalną w spółdzielnię, fundację i spółki, Warsaw, 1991.

Wzór Nr 1.

(Wniosek o utworzenie przedsiębiorstwa do Rady Pracowniczej)²

Dyrektor Generalny
Przedsiębiorstwa
Robót Drogowych
L.dz.....

Warszawa, dnia 1993 r.

Rada Pracownicza
Przedsiębiorstwa Robót
Drogowych w miejscu

W związku z zamierzoną reorganizacją zakładowej działalności socjalnej wnoszę o wyrażenie zgody na ustanowienie z majątku przedsiębiorstwa, składającego się ze środków finansowych, wyodrębnionych jednostek organizacyjnych wraz z ich wyposażeniem oraz właściwych służb pozaprodukcyjnych ----

Fundacji "Wypoczynek" -----

której celem będzie organizowanie na rzecz pracowników, emerytów i rencistów - byłych pracowników przedsiębiorstwa i członków rodzin:

- 1) usług i świadczeń o charakterze socjalnym, bytowym i kulturalnym,
- 2) usług i świadczeń z zakresu ochrony zdrowia, profilaktyki zdrowotnej i rehabilitacji zawodowej,
- 3) różnorodnych form wypoczynku po pracy, w tym imprez kulturalno-oświatowych, sportowo-rekreacyjnych i turystycznych,
- 4) w miarę potrzeby i posiadanych środków - pomocy rzeczowej i finansowej dla rodzin wymagających społecznego wsparcia.

Zakłada się, że fundacja będzie prowadzić własną działalność gospodarczą, w celu uzyskania dodatkowych środków na realizację zadań statutowych.

Załączono komplet projektów dokumentów wymaganych do ustanowienia wyżej wymienionej fundacji, wraz z uzasadnieniem.³

Dyrektor

² wzór ten może przydać się do sporządzania wniosków dotyczących tworzenia spółdzielni i spółek

³ w uzasadnieniu należy opisać stan bazy, koszty i powód przekształcenia, czyli założenia do zmian własnościowych.

Wzór Nr 2

(uchwała rady pracowniczej)

Rada Pracownicza
Przedsiębiorstwa
Robót Drogowych
L.dz.....

Warszawa, dnia 1993 r.

U C H W A Ł A Nr/93
Rady Pracowniczej Przedsiębiorstwa Robót Drogowych w Warszawie
z dnia 1993 r.

Po zapoznaniu się z wnioskiem zgłoszonym przez Dyrektora Generalnego PRD w dniu 1993 r. w sprawie wyrażenia zgody na ustanowienie z majątku Przedsiębiorstwa Robót Drogowych w Warszawie -----
Fundacji "Wypoczynek" z siedzibą w Warszawie⁴

Rada Pracownicza wyraża zgodę na utworzenie wymienionej fundacji i na przekazanie jej składników majątkowych wymienionych w projektach dokumentów założycielskich, tj. w akcie notarialnym i statucie fundacji, przedstawionych Radzie Pracowniczej za nr wchodzącym

Za Radę Pracowniczą
Przewodniczącą

.....

⁴ podobne brzmienie powinna mieć uchwała Rady Pracowniczej w sprawie utworzenia spółdzielni mieszkaniowej lub spółki z ograniczoną odpowiedzialnością.
W odniesieniu do spółki z o.o. - Rada Pracownicza wyraża zgodę na utworzenie przez PRD takiej spółki pod firmą "TRAMP" - Sp. z o.o. - i objęcie w niej 49% udziałów o wartości 1.470 mln. zł.

W odniesieniu do spółdzielni mieszkaniowej - Rada Pracownicza wyraża zgodę na przekazanie Spółdzielni Mieszkaniowej "Pod dębami" w dzierżawę, sprzedaż leasingową lub lewarowaną, użyczenie (wybrać odpowiednią formułę) zakładowych domów mieszkalnych, hotelu pracowniczego itp. - i określa warunki.

Wzór Nr 3

(akt notarialny o ustanowienie fundacji)

Kancelaria Notarialna
w Warszawie

Repertorium Nr/1993 r.

AKT NOTARIALNY

Dnia 1993 r. w Kancelarii Notarialnej w Warszawie przed notariuszem stawili się:

1)S. zam. w leg.
DO

2)S. zam. w leg.
DO

działający łącznie w imieniu Przedsiębiorstwa Robót Drogowych w Warszawie, ul. Malinowa 4a, na podstawie wpisu do rejestru przedsiębiorstw państwowych prowadzonego przez Sąd Rejonowy zgodnie z okazanym wpisem poświadczonym z dnia oraz na podstawie uchwały Rady Pracowniczej PRD Nr z dnia i oświadczyli wolę ustanowienia fundacji. Tożsamość stawających notariusz ustalił na podstawie okazanych dowodów osobistych wymienionych wyżej.

OŚWIADCZENIE WOLI O USTANOWIENIU FUNDACJI

- § 1. Stawający oświadczają, że ustanawiają fundację pod nazwą "WYPOCZYNEK", zwaną dalej "Fundacją"-----
- § 2. Siedzibą Fundacji jest m.st. Warszawa, a terenem jej działania obszar Rzeczypospolitej Polskiej i zagranica. -----
- § 3. Celem Fundacji jest organizowanie na rzecz pracowników PRD, emerytów i rencistów - byłych pracowników przedsiębiorstwa oraz członków rodzin następujących rodzajów działalności: -----
- a) usług i świadczeń o charakterze socjalnym, bytowym i kulturalnym,
- b) usług i świadczeń z zakresu ochrony zdrowia, profilaktyki zdrowotnej i rehabilitacji zawodowej, -----
- c) różnorodnych form wypoczynku po pracy, w tym imprez kulturalno-

oświatowych, sportowo-rekreacyjnych i turystycznych,-----

- d) w miarę potrzeby i posiadanych środków - pomocy rzeczowej i finansowej dla rodzin wymagających społecznego wsparcia.-----

§ 4. Majątek Fundacji stanowią:

- a) fundusz założycielski w kwocie jednego miliarda dwustu milionów złotych (1.200.000.000 zł)-----
- b) sprzęt i wyposażenie zakładowego domu kultury w Warszawie, ul. Malinowa 4a, według stanu na dzień1993 r.-----
- c) wyposażenie biblioteki zakładowej wraz z księgozbiorem, według stanu ewidencyjnego na dzień1993 r.-----
- d) sprzęt sportowo-turystyczny stanowiący wyposażenie zakładowej wypożyczalni sprzętu sportowego PRD według stanu na dzień1993 r.-----
- e) sprzęt i wyposażenie zakładowej orkiestry dętej PRD według stanu na dzień1993 r.-----
- f) sprzęt i wyposażenie przyzakładowej przychodni lekarskiej wraz z apteką, inhalatorium i ośrodkiem rehabilitacji zawodowej, znajdujących się w budynku PRD przy ul. Malinowej 4a, według stanu na dzień1993 r.-----
- g) sprzęt i wyposażenie ośrodka rekreacyjnego "Mazowszanka" w Białobrzegach według stanu na dzień1993 r.-----
- h) środki finansowe pochodzące z corocznych odpisów z zysku brutto przedsiębiorstwa, w wysokości nie niższej niż 0,5% tego zysku. -----

Ponadto do majątku Fundacji będą zaliczać się nieruchomości i ruchomości pochodzące z zapisów, spadków przyjętych przez Fundację z dobrodziejstwem inwentarza i darowizn oraz nabyte przez Fundację, środki pochodzące ze zbiorów pieniężnych, odsetek od lokat terminowych, zysków z działalności gospodarczej, dochodów z nieruchomości i praw majątkowych, dotacji, loterii i innych źródeł.

§ 5. Przedsiębiorstwo Robót Drogowych użycza Fundacji na czas nieokreślony w ciągu 30 dni od daty jej zarejestrowania następujące składniki majątkowe:

- a) budynek przy ul. Malinowej 4a, w którym mieści się zakładowy dom kultury, biblioteka, orkiestra zakładowa, kółka zainteresowań i Klub Srebrnego Włosa, -
- b) parter budynku przy ul. Malinowej 4b, w którym mieści się przyzakładowa przychodnia lekarska, apteka, inhalatorium i ośrodek rehabilitacji zawodowej, -----
- c) ośrodek rekreacyjny "Mazowszanka" w Białobrzegach, -----

d) suterene w budynku przy ul. Malinowej 4b, w której znajduje się wypożyczalnia sprzętu sportowego PRD. -----

§ 6. Notariusz poinformował stawających o treści ustawy z dnia 6 kwietnia 1984 r. o fundacjach (Dz.U. z 1991 r. Nr 46 poz. 203), a w szczególności o tym, że Fundacja uzyska osobowość prawną z chwilą jej wpisania do rejestru fundacji w Sądzie Rejonowym dla Miasta Stołecznego Warszawy. -----

§ 7. Wypisy aktu mogą być wydawane Fundacji bez ograniczeń. -----

§ 8. Oświadczenie niniejsze jest wolne od opłaty notarialnej na podstawie art. 8 ust. 1 powołanej wyżej ustawy o fundacjach. -----

Akt został odczytany, przyjęty i podpisany. -----

Podpisali:

.....

.....

.....

(notariusz)

.....

(pełnomocnik założyciela)

STATUT FUNDACJI "WYPOCZYNEK"

Postanowienia ogólne

§ 1.

Fundacja "WYPOCZYNEK" zwana dalej "Fundacją", ustanowiona aktem notarialnym nr Rep. z dnia w Kancelarii Notarialnej w Warszawie, przez Fundatora Przedsiębiorstwo Robót Drogowych w Warszawie, ul. Malinowa 4a, zwana dalej "PRD", działa na podstawie ustawy z dnia 6 kwietnia 1984 r. o fundacjach (Dz.U. z 1991 r. Nr 46 poz. 203) i niniejszego statutu, pod nadzorem właściwego ministra.

§ 2.

Siedzibą Fundacji jest miasto stołeczne Warszawa, a terenem jej działania obszar Rzeczypospolitej Polskiej i zagranica.

§ 3.

Fundacja ma osobowość prawną na podstawie wpisu do rejestru fundacji w Sądzie Rejonowym dla m.st. Warszawy za nr.

§ 4.

Fundacja ma charakter otwarty. Mogą do niej przystępować po wniesieniu wkładu materialnego osoby fizyczne i osoby prawne z kraju i z zagranicy.

§ 5.

Fundacja może połączyć się z inną fundacją o podobnych celach.

Cele i środki działania Fundacji

§ 6.

Celem Fundacji jest organizowanie na rzecz pracowników PRD, emerytów i rencistów - byłych pracowników przedsiębiorstwa oraz członków ich rodzin następujących rodzajów działalności:

- 1) usług i świadczeń o charakterze socjalnym, bytowym i kulturalnym,
- 2) usług i świadczeń z zakresu ochrony zdrowia, profilaktyki zdrowotnej i rehabilitacji zawodowej,
- 3) różnorodnych form wypoczynku po pracy, w tym imprez kulturalnych, oświatowych, sportowo-rekreacyjnych i turystycznych,
- 4) w miarę potrzeby i posiadanych środków - pomocy rzeczowej i finansowej dla rodzin wymagających społecznego wsparcia.

§ 7.

Fundacja realizuje swoje cele przez prowadzenie:

- 1) zakładowego domu kultury i działających w nim zespołów zainteresowań,
- 2) zakładowej orkiestry dętej PRD,
- 3) biblioteki zakładowej,
- 4) zakładowej wypożyczalni sprzętu sportowego PRD,
- 5) zakładowej przychodni lekarskiej wraz z apteką, inhalatorium i ośrodkiem rehabilitacji zawodowej,
- 6) ośrodka rekreacyjnego "Mazowszanka" w Białobrzegach,
- 7) Klubu Srebrnego Włosa.

Majątek Fundacji

§ 8.

Majątek Fundacji stanowią:

- 1) fundusz założycielski w kwocie jednego miliarda dwustu milionów złotych,
- 2) sprzęt i wyposażenie zakładowego domu kultury, zakładowej biblioteki wraz z księgozbiorem, zakładowej orkiestry dętej PRD,
- 3) sprzęt i wyposażenie przyzakładowej przychodni lekarskiej wraz z apteką, inhalatorium i ośrodkiem rehabilitacji zawodowej,
- 4) sprzęt i wyposażenie ośrodka rekreacyjnego "Mazowszanka" w Białobrzegach,

- 5) sprzęt sportowo-turystyczny stanowiący wyposażenie zakładowej wypożyczalni sprzętu sportowego PRD,
- 6) nieruchomości i ruchomości pochodzące z darowizn, zapisów i spadków przyjętych z dobrodziejstwem inwentarza oraz nabyte przez Fundację,
- 7) środki finansowe pochodzące z corocznych odpisów z zysku wypracowanego przez PRD w kwocie nie niższej niż 0,5% zysku brutto,
- 8) środki pieniężne pochodzące ze zbiórek pieniężnych, loterii, odsetek od lokat terminowych, zysków z działalności gospodarczej, dochodów z nieruchomości i praw majątkowych, dotacji, darowizn i innych źródeł.

§ 9.

Składniki majątkowe wnoszone przez PRD i wymienione w § 8, pkt 1-5 i 7, zostaną przekazane Fundacji w ciągu 30 dni od daty jej zarejestrowania w rejestrze fundacji w Sądzie.

§ 10.

1. Majątek Fundacji jest przeznaczony przede wszystkim na realizację statutowych celów Fundacji. Służy on także - z zastrzeżeniem ust. 2 - na pokrycie kosztów jej utrzymania oraz prowadzenia działalności gospodarczej.
2. Dotacje, darowizny, spadki i zapisy będą przeznaczone na realizację celów wymienionych w ust. 1, chyba, że ofiarodawcy określą inny cel, na jaki mają być one użyte.

§ 11.

Za podjęte przez siebie zobowiązania Fundacja odpowiada całym swoim majątkiem.

§ 12.

1. Umowy, pełnomocnictwa oraz wszelkie oświadczenia woli pociągające za sobą zobowiązania pieniężne lub zmiany w majątku Fundacji wymagają - dla swojej ważności - podpisania przez Prezesa Zarządu lub innego upoważnionego członka kierownictwa Zarządu oraz skarbnika (głównego księgowego) Fundacji.
2. Zbycie trwałych składników majątku Fundacji, których wartość przekracza kwotę ustaloną przez Radę Nadzorczą, może nastąpić tylko za zgodą tejże Rady, a pozostałych składników tylko w wypadkach ekonomicznie niezbędnych.

§ 13.

W razie likwidacji Fundacji przed wyczerpaniem jej majątku, księgozbiór i wyposażenie biblioteki należy przekazać na zasilenie zasobów innej biblioteki publicznej lub

szkolnej, a pozostałe składniki majątku spieniężyć i wraz z resztą środków finansowych przeznaczyć na pomoc socjalną dla rodzin pracowników i byłych pracowników, wymagających społecznego wsparcia.

Organy Fundacji i organizacja ich pracy

1. Organami Fundacji są:
 - 1) Rada Nadzorcza,
 - 2) Zarząd.
2. Kadencja organów Fundacji trwa trzy lata.

§ 15.

1. Radę Nadzorczą Fundacji tworzą osoby delegowane przez Radę Pracowniczą, związki zawodowe i dyrekcję PRD, w liczbie po 2 osoby.
2. Funkcję Przewodniczącego Rady Nadzorczej pełni z urzędu dyrektor generalny PRD.

§ 16.

1. Do zakresu działania Rady Nadzorczej należy:
 - 1) wytyczanie głównych kierunków działalności Fundacji oraz nadzór nad ich prawidłową realizacją,
 - 2) ustalanie zmian w statucie Fundacji i jej strukturze organizacyjnej,
 - 3) ustalanie składu, struktury i organizacji Zarządu Fundacji oraz funkcji, które mogą być pełnione za wynagrodzeniem, na podstawie umowy o pracę lub innego rodzaju umowy,
 - 4) powoływanie Zarządu i dokonywanie zmian w jego składzie w ciągu kadencji,
 - 5) zatwierdzanie planu kosztów działalności Fundacji, jej sprawozdań finansowych i bilansów rocznych,
 - 6) rozpatrywanie i zatwierdzanie sprawozdań z działalności Zarządu oraz udzielanie absolutorium temu Zarządowi,
 - 7) podejmowanie decyzji w sprawie połączenia Fundacji z inną fundacją o zbieżnych lub pokrewnych celach oraz decyzji o likwidacji Fundacji,

- 8) tworzenie i likwidacja zakładów gospodarczych oraz podejmowanie decyzji w sprawie przystąpienia Fundacji do spółek prawa handlowego, zakupu papierów wartościowych, lokowania pieniędzy na rachunkach lokat terminowych,
 - 9) uchwalanie regulaminu działania Zarządu i zakresu czynności jego członków,
 - 10) ustalanie regulaminu działalności gospodarczej Fundacji,
 - 11) wykonywanie innych zadań określonych w poszczególnych postanowieniach statutu.
2. Rada Nadzorcza zbiera się według potrzeb, nie rzadziej jednak niż dwa razy w roku obrachunkowym. Na wniosek każdego z jej członków lub na umotywowany wniosek Zarządu Rada zbiera się niezwłocznie.
 3. Uchwały Rady zapadają zwykłą większością głosów w obecności co najmniej 2/3 jej członków. W razie równej liczby głosów decyduje głos przewodniczącego posiedzenia.
 4. Przewodniczący Rady Nadzorczej może na wypadek swojej nieobecności na posiedzeniu udzielić pełnomocnictwa - w wymaganej formie prawnej - innemu członkowi Rady, do występowania w jego imieniu na posiedzeniu Rady lub Zarządu Fundacji.

§ 17

1. Do Zarządu Fundacji, którego liczbę i skład osobowy ustala Rada Nadzorcza według faktycznych potrzeb, wchodzi prezes, 1-2 wiceprezesów i skarbnik (główny księgowy) powołani przez Przewodniczącego Rady Nadzorczej. Pracami Zarządu kieruje jego prezes.
2. Do zadań Zarządu należy:
 - 1) wykonywanie uchwał Rady Nadzorczej i składanie jej sprawozdań ze swojej działalności,
 - 2) bieżące kierowanie działalnością Fundacji zgodnie z jej celami, postanowieniami statutu i obowiązującymi przepisami prawa,
 - 3) reprezentowanie Fundacji na zewnątrz,
 - 4) bezpośredni nadzór nad wyodrębnionymi zakładami Fundacji prowadzącymi działalność gospodarczą,
 - 5) wykonywanie innych zadań nie zastrzeżonych do kompetencji pozostałych organów Fundacji.

§ 18.

1. Posiedzenia Zarządu są zwoływane przez prezesa w miarę potrzeby, jednak nie rzadziej niż jeden raz w miesiącu.
2. O terminie i porządku dziennym posiedzenia Zarządu prezes zawiadamia przewodniczącego Rady Nadzorczej Fundacji.
3. Decyzje Zarządu zapadają w formie uchwał podejmowanych zwykłą większością głosów. Do prawomocności uchwał wymagana jest co najmniej połowa składu jego członków.

§ 19

1. Obsługa techniczna i prawna Fundacji może być wykonywana przez Biuro Fundacji podporządkowane prezesowi Zarządu.
2. Biuro Fundacji tworzy i określa zasady jego działania Rada Nadzorcza.
3. Rada Nadzorcza określa stanowiska pracy, które w Biurze Fundacji mogą być wykonywane na podstawie umowy o pracę.

Działalność gospodarcza Fundacji

§ 20

1. W celu zwiększenia środków na realizację zadań statutowych Fundacja może prowadzić działalność gospodarczą i w tym celu tworzyć zakłady gospodarcze jako odrębne jednostki organizacyjne w kraju i za granicą.
2. Działalność gospodarczą Fundacji nadzoruje prezes Zarządu lub inny członek Zarządu upoważniony przez Radę Nadzorczą.
3. Przedmiot i zasady prowadzenia działalności gospodarczej Fundacji określa regulamin, stanowiący integralną część statutu Fundacji.

Likwidacja Fundacji

§ 21

1. Fundacja ulega likwidacji w razie wyczerpania się środków i majątku Fundacji lub w razie osiągnięcia celów, dla których Fundacja została ustanowiona.
2. Stan likwidacji stwierdza Rada Nadzorcza, która jednocześnie powołuje likwidatora Fundacji.
3. O likwidacji Fundacji Rada Nadzorcza zawiadamia właściwego ministra.

Rachunkowość Fundacji

§ 22

1. W zakresie prowadzenia działalności gospodarczej Fundacja kieruje się zasadami rachunku ekonomicznego.
2. Księgowość Fundacji jest prowadzona według zasad określonych przez Ministra Finansów dla tego rodzaju podmiotów.

Załącznik - Regulamin działalności gospodarczej.

Wzór Nr 5

(załącznik do statutu Fundacji "WYPOCZYNEK")

R E G U L A M I N

działalności gospodarczej Fundacji

§ 1.

Przedmiotem działalności gospodarczej Fundacji jest:

- 1) wykonywanie usług z zakresu profilaktyki zdrowotnej i ochrony zdrowia,
- 2) prowadzenie punktów sprzedaży detalicznej, zwłaszcza wydawnictw, słodczy i pamiątek,
- 3) organizowanie wystaw artystycznych, pokazów rewii mody, seansów filmowych i spektakli teatralnych,
- 4) organizowanie kurso-konferencji, przyjęć okolicznościowych, działalności hotelowej i gastronomicznej,
- 5) organizowanie kursów językowych, kroju i szycia i innych form szkoleniowych z różnych dziedzin bądź w określonych specjalnościach,
- 6) wypożyczanie sprzętu sportowego,
- 7) wynajmowanie sprzętu żeglarskiego w sezonie letnim i cumowanie sprzętu pływającego osób trzecich po sezonie na terenie ośrodka rekreacyjnego "Mazowszanka" w Białobrzegach,

- 8) prowadzenie mini kawiarni, kiosków i bufetów garmazeryjnych,
- 9) organizowanie imprez sportowo-turystycznych,
- 10) wykonywanie innych usług socjalno-bytowych dla ludności.

§ 2.

1. Działalność gospodarcza Fundacji jest prowadzona przez wyodrębnione organizacyjnie i finansowo zakłady gospodarcze, w formie ośrodków zdrowia, służb specjalistycznych, agencji, klubów i biur podporządkowanych Zarządowi Fundacji.

§ 3.

Składnikami majątkowymi przeznaczonymi na prowadzenie działalności gospodarczej są:

- 1) połowa kwoty funduszu założycielskiego, tj. kwota 600 mln zł.,
- 2) urządzenia i sprzęt oraz inne składniki majątkowe przekazywane sukcesywnie poszczególnym jednostkom organizacyjnym przez Zarząd Fundacji,
- 3) część zysków osiągniętych przez zakłady gospodarcze, w wysokości określonej przez Zarząd Fundacji,
- 4) surowce i materiały, sprzęt i urządzenia nabyte z kwot wymienionych w pkt. 1 i 3,
- 5) udziały majątkowe w spółkach prawa handlowego i zyski z innych tytułów prawnych.

§ 4.

1. Składniki majątku Fundacji przekazane zakładom gospodarczym wyodrębnione pod względem ewidencyjnym i oddzielnie zarządzane, są traktowane jako majątek tych zakładów.

2. Pieniężne składniki tego majątku oraz bieżące dochody zakładów gospodarczych są lokowane na rachunkach bankowych konkretnych zakładów.

§ 5.

Działalność gospodarcza zakładów gospodarczych jest prowadzona na zasadach rachunku ekonomicznego, a rozliczenia finansowe i ewidencja finansowo-księgowa zgodnie z obowiązującymi w tym przedmiocie przepisami prawa.

§ 6.

1. Zakłady gospodarcze sporządzają w każdym roku kalendarzowym (obrachunkowym) bilans i rachunek wyników, które podlegają zatwierdzeniu przez Zarząd Fundacji.

2. Do kosztów obciążających działalność zakładów gospodarczych oprócz kosztów własnych zakładów wlicza się również ustaloną przez Zarząd Fundacji część wynagrodzeń wraz z podobnymi, wypłacanych urzędującym członkom Fundacji, jak też odpisy na zakładowe fundusze socjalny i mieszkaniowy dla tych osób.

§ 7.

1. Po zatwierdzeniu bilansu i rachunku wyników Zarząd Fundacji podejmuje uchwałę o podziale zysku z przeznaczeniem na:

- 1) działalność statutową Fundacji - i
- 2) rozwój działalności zakładów gospodarczych,
- 3) ewentualnie inne cele.

2. Jeżeli wynik gospodarczy zakładów wykaże straty, Zarząd Fundacji przedstawia sprawę Radzie Nadzorczej wraz z odpowiednimi wnioskami co do potrzeby i możliwości kontynuowania przez te zakłady dotychczasowej działalności oraz sposobu i źródła pokrycia strat.

§ 8.

W razie potrzeby Zarząd Fundacji może zobowiązać zakłady gospodarcze do:

- 1) finansowania określonej działalności statutowej Fundacji z bieżących dochodów na poczet części zysków przeznaczonych - stosownie do postanowień & 7 ust. 1 pkt. 1, na działalność statutową Fundacji,
- 2) nieodpłatnego wykonywania określonych usług bezpośrednio na rzecz działalności statutowej Fundacji.

§ 9.

1. Na czele zakładu gospodarczego stoi jego dyrektor, powoływany i odwoływany przez prezesa Zarządu Fundacji.

2. Do zakładu gospodarczego Fundacji oraz jego dyrektora mają zastosowanie przepisy Kodeksu pracy dotyczące obowiązków i uprawnień zakładu pracy i jego kierownika.

§ 10.

Dyrektor zakładu gospodarczego jest przełożonym wszystkich pracowników zakładu i podejmuje decyzje personalne (przyjęcia, zwolnienia, nagradzanie i karanie pracowników). Decyzje dotyczące zatrudnienia i zwalniania zastępcy dyrektora i głównego księgowego zakładu wymagają jednak uzgodnienia z Zarządem Fundacji.

§ 11.

Z zastrzeżeniem & 12 - dyrektor zakładu na podstawie i w granicach udzielonego mu

przez Zarząd pełnomocnictwa:

- reprezentuje Fundację w sprawach związanych z bieżącą działalnością kierowanego przez siebie zakładu,
- może udzielić dalszych pełnomocnictw do dokonywania oznaczonych czynności lub czynności określonego rodzaju.

§ 12.

1. Zbycie i obciążenie środków trwałych wchodzących w skład majątku zakładu, o wartości przekraczającej kwotę oznaczoną przez Zarząd Fundacji, jak również zaciąganie zobowiązań dotyczących działalności zakładu w wysokości przewyższającej kwotę ustaloną przez Zarząd, wymaga decyzji Zarządu, chociażby pełnomocnictwo udzielone dyrektorowi zakładu obejmowało te czynności.

2. Za zobowiązania zakładów gospodarczych Fundacja odpowiada całym swoim majątkiem.

§ 13.

1. Dochód z działalności gospodarczej Fundacji stanowi różnica pomiędzy przychodami ze sprzedaży, a kosztami uzyskania tych przychodów, w rozumieniu przepisów o podatku dochodowym od osób prawnych (Dz.U. z 1991 r. Nr 49 poz. 216).

2. Dochodami są również:

- 1) przychody uzyskane ze sprzedaży składników majątku trwałego,
- 2) wyniki przeszacowania zapasów surowców, materiałów, produkcji nie zakończonej, wyrobów gotowych i innych środków trwałych, spowodowanego zmianą zasad nakazaną obowiązującymi przepisami w tym zakresie.

3. Dochody ustalone zgodnie z postanowieniami ust. 1 i 2, po pomniejszeniu o należny podatek dochodowy, stanowią zysk do podziału na realizację celów statutowych Fundacji, na rozwój działalności gospodarczej i inne cele - w wysokości i proporcjach określonych przez Zarząd Fundacji w trybie podanym w & 7 niniejszego regulaminu.

Wzór Nr 6

(wniosek o rejestrację fundacji)

.....
(nazwisko pełnomocnika ustanawiającego fundację)

Warszawa, dnia 19 r.

Sąd Rejonowy
dla Miasta Stołecznego Warszawy
Wydział Rejestrowy
w Warszawie

Zwracam się z wnioskiem o wpisanie Fundacji "WYPOCZYNEK" do rejestru fundacji.

Do wniosku załączam następujące dokumenty:

- 1) wypis aktu notarialnego o ustanowieniu Fundacji "WYPOCZYNEK",
- 2) statut Fundacji "WYPOCZYNEK" wraz z regulaminem działalności gospodarczej Fundacji,
- 3) odpis protokołu z posiedzenia Rady Nadzorczej, na którym powołano Zarząd Fundacji, wraz z imiennym wykazem jego członków, pełnionymi przez nich funkcjami i zakresem ich kompetencji.

Prezes Zarządu Fundacji
"WYPOCZYNEK"

Załączników 3

Uchwała Nr 1/93

Nadzwyczajnego Walnego Zgromadzenia członków-założycieli Spółdzielni Mieszkaniowej "Pod dębami" w Warszawie,
z dnia 1 kwietnia 1993 r.

w sprawie utworzenia spółdzielni, uchwalenia jej statutu i wyboru organów spółdzielni.

Niżej podpisani pracownicy Przedsiębiorstwa Robót Drogowych w Warszawie działając na podstawie przepisów ustawy z dnia 16 września 1982 r. - Prawo spółdzielcze (Dz.U. Nr 30 poz. 210 z późniejszymi zmianami) uchwalają co następuje:

§ 1

1. Zakłada się spółdzielnię mieszkaniową pod nazwą "Pod dębami", z siedzibą w Warszawie, ul. Malinowa 4a.
2. Członkami spółdzielni w pierwszej kolejności mogą być pracownicy Przedsiębiorstwa Robót Drogowych w Warszawie, zwłaszcza zajmujący lokale w zakładowych domach mieszkalnych i w hotelu pracowniczym stanowiącym własność, bądź przedmiot użytkowania wieczystego przedsiębiorstwa oraz inne osoby przyjęte przez Zarząd Spółdzielni.

§ 2

Uchwala się statut spółdzielni w brzmieniu stanowiącym załącznik Nr 1 do uchwały.

§ 3

Wybiera się 3 osobowy zarząd spółdzielni i 3 osobową radę nadzorczą spółdzielni. Skład osobowy organów Spółdzielni stanowi załącznik Nr 2 do uchwały. (Zarząd na następne kadencje wybiera Rada Nadzorcza).

§ 4

Upoważnia się nowo wybrane organy Spółdzielni do niezwłocznego podjęcia przewidzianych prawem czynności, w celu zarejestrowania spółdzielni i rozpoczęcia działalności przewidzianej w Statucie.

Podpisali: (wszyscy obecni na zgromadzeniu
członkowie-założyciele)

1. Jan Nowak, zam. w Warszawie, ul. Płaska 397, leg. DO Nr SJ 3245211
2. (itd.).

Wzór Nr 8

Zał. Nr 1 do uchwały Nadzw.
Walnego Zgromadzenia z dnia
1 kwietnia 1993 r.

S T A T U T

Spółdzielni Mieszkaniowej "Pod dębami"

I. Postanowienia ogólne

§ 1.

1. Nazwa Spółdzielni brzmi: Spółdzielnia Mieszkaniowa "Pod dębami".
2. Siedzibą Spółdzielni jest Miasto Stołeczne Warszawa.
3. Miejszem działania Spółdzielni jest obszar całego kraju.

§ 2.

1. Celem Spółdzielni jest zaspokajanie potrzeb mieszkaniowych członków zamieszkujących w jej zasobach oraz ich potrzeb życiowych, gospodarczych i kulturalnych.
2. Dla realizacji celów statutowych Spółdzielnia nabywa potrzebne jej tereny, buduje lub nabywa domy mieszkalne i lokale użytkowe (oprócz garaży, które budują członkowie z własnych zasobów) oraz inne urządzenia gospodarcze, pomocnicze i rekreacyjne.
3. Cele wymienione w ust. 1 Spółdzielnia realizuje poprzez: przydzielanie w ramach posiadanych zasobów lokali mieszkalnych i użytkowych; utrzymywanie lokali w należyłym stanie; prowadzenie zakładów produkcji pomocniczej i usług własnych, w postaci klubów, świetlic, pralni, punktów handlowych, usług poligraficznych, zarządzanie majątkiem Spółdzielni.

II. Członkowie Spółdzielni

§ 3.

1. Wszyscy członkowie Spółdzielni mają równe prawa i obowiązki, a członkowie organów Spółdzielni dodatkowe obowiązki określone w Statucie i ustawie Prawo spółdzielcze.
2. Wszyscy członkowie Spółdzielni mają obowiązek chronić jej majątek, wykonywać postanowienia Statutu i pomagać organom Spółdzielni w realizacji zadań statutowych.

§ 4.

1. Członkiem Spółdzielni Mieszkaniowej "Pod dębami" z mocy prawa staje się osoba zamieszkująca w zasobach mieszkaniowych będących dotychczas własnością Przedsiębiorstwa Robót Drogowych w Warszawie i posiadająca przydział na swój lokal, jeśli złożyła deklarację wstąpienia do Spółdzielni, wniosła stosowny udział i wkład mieszkaniowy lub budowlany oraz wpłaciła opłatę członkowską.
2. Członkiem Spółdzielni może zostać osoba fizyczna posiadająca pełną zdolność do czynności prawnych, jeżeli: zgromadziła wkład mieszkaniowy lub budowlany; ubiega się o przydział lokalu i jest możliwość zaspokojenia jej potrzeb w określonym czasie; przysługuje jej roszczenie o przydział lokalu po byłym członku; nabyła uprawnienie do lokalu w drodze czynności cywilnoprawnej, dziedziczenia, z tytułu podziału majątku małżeńskiego lub jest małżonkiem członka Spółdzielni.
3. Osoba małoletnia może być przyjęta na członka Spółdzielni w przypadkach określonych w ust. 2 w związku z przeniesieniem na nią własnościowego prawa do lokalu rodziców lub zapisu testamentowego.

§ 5.

O przyjęciu w poczet członków Spółdzielni decyzję podejmuje Zarząd, po złożeniu przez osobę ubiegającą się o członkostwo deklaracji, wpłacie wpisowego, wkładu udziału, w wysokości określonej przez Statut.

§ 6.

1. Członkami Spółdzielni przysługuje: czynne i bierne prawo wyborcze do organów Spółdzielni, prawo zgłaszania wniosków związanych z działalnością Spółdzielni; prawo współudziału w organizowaniu samorządu członkowskiego i uczestnictwa w jego pracach; prawo wglądu do regulaminów wewnętrznych, rejestru członków oraz protokołów z zebrań Walnego Zgromadzenia i Rady Nadzorczej.
2. Członek Spółdzielni jest obowiązany do podporządkowania się zasadom dotyczącym praw i obowiązków członka Spółdzielni, a w szczególności: regularnie uiszczać należności z tytułu korzystania z lokalu mieszkalnego bądź użytkowego; stosować się do postanowień Statutu, regulaminów oraz uchwał organów Spółdzielni; udostępniać zajmowany lokal na czas wymiany urządzeń, ich remontu i konserwacji; uczestniczyć w pokrywaniu strat Spółdzielni do wysokości wniesionych udziałów; dbać o użytkowany lokal i mienie Spółdzielni.

§ 7.

1. Opłaty członkowskie wynoszą: wpisowe 20.000 zł, udział 200.000 zł.
2. Ilość udziałów, jaką winna wnieść osoba wstępująca do Spółdzielni, wyznacza regulamin uchwalony przez Radę Nadzorczą.

3. Wkłady, udziały i wpisowe wniesione przed zarejestrowaniem Spółdzielni traktowane są jako sumy depozytowe.

§ 8.

Terminy wnoszenia opłat członkowskich, wpisowego i udziałów określa Zarząd Spółdzielni, a tryb postępowania w razie decyzji odmownej regulamin uchwalony przez Radę Nadzorczą.

§ 9.

1. Członkostwo ustaje na skutek: wystąpienia członka ze Spółdzielni; wykluczenia; wykreślenia z rejestru członków; śmierci członka.
2. Członek może w każdym czasie wystąpić ze Spółdzielni za uprzednim wypowiedzeniem pisemnym, złożonym z wyprzedzeniem 3 miesięcy.
3. Na wniosek członka okres wypowiedzenia może być za zgodą Zarządu skrócony.

§ 10.

Wykluczenie członka ze Spółdzielni może nastąpić z winy członka w przypadku: świadomego działania na szkodę Spółdzielni; poważnego wykroczenia przeciwko zasadom współżycia społecznego i interesom członków Spółdzielni; uporczywego nie wypełniania obowiązków statutowych; świadomego wprowadzenia Spółdzielni w błąd w celu uzyskania uprawnień członkowsko-mieszkaniowych; nie wpłacenia w terminie wpisowego, udziału lub wkładu.

§ 11.

Wykreślenie z rejestru członków z przyczyn nie zawinionych przez członka może nastąpić, jeżeli członek utracił prawo do lokalu w wyniku uchylecia lub unieważnienia czynności prawnej, na podstawie której to prawo zostało nabyte, lub gdy stale przebywa w zakładzie zamkniętym.

§ 12.

1. Uchwałę o wykluczeniu członka lub wykreśleniu z rejestru członków podejmuje Rada Nadzorczą na wniosek Zarządu.
2. O trybie skreślenia i wykluczania oraz przysługującym członkowi terminie i trybie odwołania, stanowi regulamin uchwalony przez Radę Nadzorczą.
3. Członka zmarłego skreśla się z rejestru członków ze skutkiem od dnia śmierci.

III. Wkład mieszkaniowy

§ 13.

1. Wkład mieszkaniowy lub budowlany stanowi kwota wniesiona przez członka

Spółdzielni lub osobę ubiegającą się o mieszkanie, przeznaczona na pokrycie odpowiednio części lub pełnego kosztu budowy lokalu w statusie lokatorskim lub własnościowym.

2. Wysokość wkładu, zasady jego wnoszenia i sposób rozliczania w wypadku zamiany lokalu lub przekształcenia spółdzielczego prawa lokatorskiego na własnościowe, określa regulamin uchwalony przez Radę Nadzorczą.

IV. Spółdzielcze prawo do lokalu

§ 14.

1. Spółdzielcze prawo do lokalu powstaje z chwilą jego przydziału przez Zarząd w formie pisemnej i na warunkach określonych w umowie, pod warunkiem spełnienia przez członka wymagań statutowych i regulaminowych.
2. Spółdzielcze prawo do lokalu wygasa z chwilą ustania członkostwa.
3. W razie wygaśnięcia spółdzielczego prawa do lokalu Spółdzielnia zwraca osobie uprawnionej wkład mieszkaniowy.

§ 15.

1. Spółdzielcze prawo do lokalu uprawnia członka do używania lokalu wyłącznie na cele określone w przydziale.
2. Warunki zamiany lokalu lub jego wynajmowania osobom trzecim określa regulamin uchwalony przez Radę Nadzorczą.

§ 16.

1. Członek Spółdzielni posiadający spółdzielcze prawo do lokalu obowiązany jest uczestniczyć w ponoszeniu kosztów eksploatacji i utrzymania nieruchomości Spółdzielni, zwłaszcza do wnoszenia na jej rzecz opłat za użytkowanie lokalu, w terminie do 15-go każdego miesiąca z góry.
2. Członek Spółdzielni opuszczający lokal ma obowiązek odnowić go na własny koszt.
3. Szczegółowe zasady używania lokali w domach Spółdzielni oraz zasady porządku domowego określa odrębny regulamin uchwalony przez Radę Nadzorczą.

V. Organy Spółdzielni

§ 17.

1. Organami Spółdzielni są: Walne Zgromadzenie Członków; Rada Nadzorczą powoływana przez Walne Zgromadzenie w głosowaniu tajnym na 3 lata; Zarząd wybierany przez Radę Nadzorczą w głosowaniu tajnym, Zarząd na pierwszą kadencję

wybiera Walne Zgromadzenie.

2. Walne Zgromadzenie, Rada Nadzorcza i Zarząd działają na zasadach określonych w ustawie Prawo spółdzielcze, z uwzględnieniem specyfiki wynikającej z postanowień Statutu.
3. Tryb, sposób i warunki podejmowania uchwał przez organy Spółdzielni określają regulaminy wewnętrzne oparte o przepisy ustawy Prawo spółdzielcze.

VI. Gospodarka Spółdzielni

§ 18.

1. Spółdzielnia tworzy fundusze: udziałowy, zasobowy oraz wkładów mieszkaniowych i budowlanych.
2. Na podstawie uchwały Rady Nadzorczej Spółdzielnia może tworzyć inne fundusze celowe.

§ 19.

1. Spółdzielnia prowadzi działalność gospodarczą na zasadach rachunku ekonomicznego.
2. W sprawach gospodarki nie uregulowanej w Statucie oraz w sprawach rachunkowości Spółdzielnia stosuje przepisy ustalone przez Ministra Finansów, a w przypadku braku takich przepisów, zasady określone w regulaminach opartych na ogólnych zasadach prawa.
3. Rokiem obrachunkowym Spółdzielni jest rok kalendarzowy.

VII. Postanowienia końcowe

§ 20.

1. W sprawach nie uregulowanych niniejszym Statutem mają odpowiednie zastosowanie przepisy Prawa spółdzielczego.
2. Obowiązki Rady Nadzorczej i Zarządu wobec Spółdzielni regulują przepisy ustawy Prawo spółdzielcze.

§ 21.

Niniejszy Statut wchodzi w życie po zarejestrowaniu Spółdzielni przez Sąd Rejonowy w rejestrze spółdzielni.

Wzór Nr 9

Załącznik Nr 2 do uchwały Nadzwyczajnego
Walnego Zgromadzenia z dnia
1 kwietnia 1993 r.

Lista członków organów Spółdzielni Mieszkaniowej "Pod dębami"

1. Rada Nadzorcza

1. Przewodniczący - Bogusław Krzyżanowski, zam. w Warszawie, ul. Malinowa 4b m.22.
2. Członkowie:
 - 1) Elżbieta Zaleska zam. w Warszawie ul. Malinowa 4b m. 31
 - 2) Krzysztof Walski, zam. w Warszawie, ul. Malinowa 4b m.12

2. Zarząd

1. Prezes - Karolina Majewska, zam. w Warszawie, ul. Malinowa 4b m.17
2. Członkowie:
 - 1) Antoni Brzezina, zam. w Warszawie, ul. Malinowa 4b m. 24
 - 2) Janusz Grzyb, zam. w Warszawie, ul. Malinowa 4b m. 29.

Za zgodność z uchwałą:
Przewodniczący Nadzwyczajnego Walnego Zgromadzenia

Wzór Nr 10

(Akt założycielski spółki z o.o.)
Rep. A I nr 133/93)

AKT NOTARIALNY

Dnia pierwszego kwietnia tysiąc dziewięćset dziewięćdziesiątego trzeciego roku (01.04.1993 r.) w Kancelarii Notarialnej w Warszawie, przed notariuszem Maliną Karską stawili się:

- 1) Wit Zareba, zam. w Warszawie, ul. Malinowa 4b m.33, legitymujący się DO Nr SJ

2213124, reprezentujący Przedsiębiorstwo Robót Drogowych w Warszawie, ul. Malinowa 4a (pełnomocnictwo w załączeniu).

- 2) Katarzyna Dębska, zam. w Warszawie, ul. Malinowa 4b m.19, legitymująca się DO Nr SJ 1934512, reprezentująca grupę wspólników będących osobami fizycznymi (pełnomocnictwo w załączeniu).

Tożsamość stawiających notariusz ustaliła na podstawie okazanych dowodów osobistych wymienionych powyżej.

Stawający oświadczyli, że zgłosili się do Kancelarii Notarialnej w celu zawarcia w formie aktu notarialnego -

UMOWY SPÓŁKI Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ

o następującej treści:

§ 1

Stawający, zwani dalej Wspólnikami oświadczają, że zawiązują spółkę z ograniczoną odpowiedzialnością, zwaną dalej Spółką działającą na podstawie przepisów Kodeksu Handlowego.

§ 2

Firma Spółki brzmi: "TRAMP", Spółka z ograniczoną odpowiedzialnością.

§ 3

Siedzibą Spółki jest Miasto Stołeczne Warszawa, a terenem działania obszar Polski i innych krajów.

§ 4

Organizację i stosunki wewnętrzne Spółki oraz zasady działania jej organów określają przepisy Kodeksu handlowego, wprowadzonego rozporządzeniem Prezydenta Rzeczypospolitej Polskiej z dnia 30 czerwca 1934 r. (Dz.U. Nr 57, poz. 502 z późniejszymi zmianami) z uzupełnieniami i zmianami wynikającymi z niniejszej umowy.

§ 5

Spółkę tworzy się w celu prowadzenia wspólnego przedsiębiorstwa zarobkowego, którego przedmiotem jest działalność gospodarcza w zakresie:

- 1) organizowania różnorodnych form wypoczynku i rekreacji dla dorosłych, dzieci i młodzieży, w kraju i za granicą,
- 2) świadczenia usług turystycznych, hotelarskich, gastronomicznych, z zakresu

- podnoszenia kwalifikacji zawodowych i ogólnych,
- 3) organizowania imprez kulturalnych, sportowych i rekreacyjnych,
 - 4) świadczenia usług leczniczych i leczniczo-uzdrowiskowych oraz prowadzenia aptek,
 - 5) prowadzenia działalności remontowo-budowlanej w zakresie budownictwa mieszkaniowego, przemysłowego, socjalnego,
 - 6) prowadzenia działalności handlowej (w tym również w dziedzinie handlu zagranicznego) oraz świadczenia usług handlowych, reklamowych, marketingowych, z zakresu finansów i księgowości,
 - 7) produkcji i przetwórstwa artykułów spożywczych,
 - 8) produkcji zabawek i pamiątek regionalnych.

§ 6

Czas trwania Spółki jest nieograniczony.

§ 7

1. Przedsiębiorstwo Robót Drogowych zastrzega sobie prawo pierwszeństwa przed innymi podmiotami w zięcaniu Spółce zadań o charakterze socjalno-bytowym, kulturalnym, sportowo-rekreacyjnym i turystycznym.
2. Spółka będzie świadczyć usługi Przedsiębiorstwu Robót Drogowych na warunkach nie mniej korzystnych niż innym podmiotom.

§ 8

1. Kapitał zakładowy Spółki wynosi 3.000.000.000,- zł (trzy miliardy złotych) i dzieli się na 1000 (tysiąc) równych i niepodzielnych udziałów o wartości - 3.000.000,- zł (trzy miliony złotych) każdy.
2. Wspólnicy mogą mieć więcej niż jeden udział.
3. Zbycie lub zastawienie udziału lub udziałów wymaga pisemnego zezwolenia Zarządu Spółki.
4. Wspólnikom przysługuje prawo pierwokupu zbywanych udziałów.

§ 9

Kapitał zakładowy może być podwyższony na mocy uchwały Zgromadzenia Wspólników, bez konieczności zmiany niniejszego aktu.

§ 10

1. Na kapitał zakładowy Spółki składają się udziały pieniężne i aporty rzeczowe wniesione przez wspólników w następującej postaci i proporcjach:

1) Przedsiębiorstwo Robót Drogowych w postaci:

- budynku składającego się ze stołówki i pomieszczeń pomocniczych o łącznej powierzchni 170 m.kw., przy ul. Malinowej 4c w Warszawie,
- sprzętu i wyposażenia stołówki, bufetu i pomieszczeń pomocniczych, stanowiącego załącznik do niniejszej umowy,
- placu o powierzchni 5.000 mkw, przylegającego do wyżej wymienionego budynku,
- wkładu pieniężnego w kwocie 370 milionów złotych.

Za powyższy wkład Przedsiębiorstwo obejmuje 490 udziałów.

2) Wspólnicy będący osobami fizycznymi wnoszą wkłady pieniężne w następującej wysokości:

- Ob. Katarzyna Dębska w kwocie 810 milionów złotych, za które obejmuje 270 udziałów,
- Ob. Jan Mariański w kwocie 540 milionów złotych, za które obejmuje 180 udziałów,
- Ob. Adam Witkowski w kwocie 180 milionów złotych, za które obejmuje 60 udziałów.

3) Na każdy udział przypada w Zgromadzeniu Wspólników jeden głos.

4) Udziały mogą być umarżane.

5) Przyznanie Przedsiębiorstwu Robót Drogowych wnoszącemu aporty rzeczowe i wkład pieniężny 490 udziałów nastąpiło w oparciu o wycenę tych wkładów dokonaną przez ekspertów według cen rynkowych, z uwzględnieniem stopnia ich zużycia.

§ 11.

Przedsiębiorstwo Robót Drogowych zobowiązuje się niezależnie od wniesienia wkładów określonych w § 10 ust.1 pkt 1, zapewnić Spółce prawo korzystania przez nią z innych posiadanych składników majątkowych i potencjału organizacyjno-materiałowego w trybie i na warunkach określonych w dodatkowo zawieranych umowach cywilnych (np. dzierżawy, najmu, użyczenia).

§ 12.

Rokiem obrachunkowym Spółki jest rok kalendarzowy.

§ 13.

1. Wspólnicy uczestniczą w podziale zysku w stosunku proporcjonalnym do posiadanych udziałów.
2. Wspólnicy zobowiązują się do dokonania dopłat przeznaczonych na pokrycie ewentualnych strat bilansowych w wysokości nie przekraczającej 10% wartości wniesionych wkładów proporcjonalnie do wniesionych udziałów.
3. Wysokość dopłat, w granicach ustalonych w ust.2 i termin ich uiszczenia ustala uchwała wspólników.

§ 14.

Władzami Spółki są:

- 1) Zgromadzenie Wspólników,
- 2) Zarząd,
- 3) Rada Nadzorcza.

§ 15.

1. Do zakresu działania Zgromadzenia Wspólników, które jest najwyższą władzą Spółki, należą sprawy określone w odnośnych przepisach Kodeksu handlowego.
2. Decyzje Zgromadzenia Wspólników zapadają w formie uchwał podejmowanych zwykłą większością głosów.

§ 16.

Zarząd składa się z 5 osób, w tym Prezesa, Wiceprezesa i trzech członków. Jako organ wykonawczy Spółki Zarząd kieruje bieżącą działalnością, podejmuje decyzje w sprawach określonych w odnośnych przepisach Kodeksu handlowego i w innych sprawach nie zastrzeżonych do kompetencji innych organów Spółki oraz reprezentuje Spółkę na zewnątrz.

§ 17.

1. W skład Zarządu mogą być powoływane osoby nie będące wspólnikami ani przedstawicielami wspólników.
2. Kadencja Zarządu trwa trzy lata, ale Zarząd w całości lub poszczególni jego członkowie mogą być odwołani w każdej chwili, w szczególności po dopuszczeniu do powstania strat.

§ 18.

Do składania oświadczeń woli oraz dokonywania czynności prawnych pociągających za sobą powstanie zobowiązań lub zmian w majątku Spółki upoważnieni są:

- 1) w sprawach nie przekraczających zakresu zwykłego zarządu - Prezes lub inny członek Zarządu,
- 2) we wszystkich pozostałych sprawach - Prezes lub wiceprezes wspólnie z jednym z pozostałych członków Zarządu, prokurentem lub pełnomocnikiem.

§ 19.

1. Rada Nadzorcza składa się z trzech członków powoływanych przez Zgromadzenie Wspólników na okres dwóch lat. Kadencja pierwszej Rady trwa jeden rok.
2. Rada Nadzorcza sprawuje stały nadzór nad działalnością Zarządu i przedsiębiorstwa Spółki.
3. Szczegółowe kompetencje i zadania Rady Nadzorczej są określone w odnośnych przepisach Kodeksu handlowego. Kompetencje te uzupełnia się uprawnieniem do zawieszania w czynnościach poszczególnych członków Zarządu, do czasu podjęcia odpowiedniej uchwały przez wspólników.

§ 20.

1. Umowy o pracę z członkami Zarządu podpisuje Rada Nadzorcza.
2. Pracownicy Spółki podlegają Zarządowi, który w szczególności przyjmuje i zwalnia pracowników, określa ich obowiązki i wynagrodzenie.

§ 21.

W sprawach nie uregulowanych postanowieniami niniejszej umowy stosuje się przepisy Kodeksu handlowego.

§ 22.

Odpisy tego aktu należy wydawać wspólnikom bez ograniczeń.

§ 23.

Pobrano:

- 1) opłatę skarbową w wysokości określonej w art.9 pkt 5 ustawy z dnia 31 stycznia 1989 r. o opłacie skarbowej (Dz.U. Nr 4 poz. 23 z późn. zm.),
- 2) opłatę notarialną, określoną w § 4 i 11 rozporządzenia Ministra Sprawiedliwości z

dnia 29 października 1989 r. w sprawie opłat za dokonanie czynności notarialnych (Dz.U. Nr 60 poz. 358 i z 1990 r. Nr 46 poz. 273).

Akt ten odczytano, przyjęto i podpisano:

Notariusz:
(---) Malina Karska

Wspólnicy:
(---) Wit Zaręba
(---) Katarzyna Dębska

Załącznik 2

Wzór Nr 11

**Oświadczenie Zarządu Spółki z o.o. "TRAMP"
o zgromadzeniu kapitału założycielskiego.**

Zarząd Spółki z o.o. "TRAMP" informuje, że wkłady pieniężne wspólników, a mianowicie:

- 1) Przedsiębiorstwa Robót Drogowych w Warszawie, ul. Malinowa 4a, - w kwocie 370 mln zł,
- 2) Ob. Katarzyny Dębskiej - w kwocie 810 mln zł.
- 3) Ob. Jana Mariańskiego - w kwocie 540 mln zł.
- 4) Ob. Adama Witkowskiego - w kwocie 180 mln zł.

zostały przekazane na konto Spółki.

Jednocześnie informuje się, że Spółka przejęła również zadeklarowane w umowie spółki udziały niepieniężne (aporty) od Przedsiębiorstwa Robót Drogowych.

Zarząd

(-)
(-)
(-)

Warszawa, dnia 19 r.

Wzór Nr 12

Lista członków Zarządu Spółki z o.o. "TRAMP"

Wyciąg z uchwały Zgromadzenia Wspólników z dnia

Ustanowiono Zarząd Spółki w następującym składzie:

- 1) Prezes - Jan Wiśniewski, zam. w ul.
- 2) Wiceprezes - Jerzy Królak, zam. w ul.
- 3) Członkowie Zarządu:
 1. zam. w ul.
 2. zam. w ul.
 3. zam. w ul.

Za zgodność z uchwałą:
Prezes (-)

Warszawa, dnia 19 r.

Wzór Nr 13

**LISTA WSPÓLNIKÓW
Spółki z ograniczoną odpowiedzialnością "TRAMP"**

Wspólnikami Spółki są:

- 1) Przedsiębiorstwo Robót Drogowych w Warszawie, które posiada - 490 udziałów,
- 2) Ob. Katarzyna Dębska zam. w Warszawie, która posiada - 270 udziałów,
- 3) Ob. Jan Mariański, zam. w Warszawie, który posiada - 180 udziałów,
- 4) Ob. Adam Witkowski zam. w Warszawie, który posiada - 60 udziałów.

Za zgodność : Prezes (-)

Warszawa, dnia 19 r.

Wzór Nr 14

WZORY PODPISÓW CZŁONKÓW ZARZĄDU SPÓŁKI Z O.O. "TRAMP"

- 1) Jan Wiśniewski - Prezes legitymujący się dowodem osobistym WA 5426185

.....
(podpis)

- 2) Jerzy Królak - Wiceprezes, legitymujący się D.O.

.....
(podpis)

- 3)- Członek Zarządu
4)itp.
5)

Poświadczenie własnoręczności podpisów:

Stwierdzam własnoręczność złożonych podpisów w mojej obecności podpisów członków Zarządu Spółki z o.o. "TRAMP".

Notariusz

(-) Malina Karska

Warszawa, dnia 19 r.

Wzór Nr 15

Wniosek

o wpis spółki z ograniczoną odpowiedzialnością do rejestru handlowego

Zarząd nowo utworzonej spółki handlowej pod nazwą "TRAMP" - Spółka z o.o. mającej swoją siedzibę w Warszawie, przy ul. Malinowej 4c. wnosi o wpisanie jej do rejestru handlowego.

Celem Spółki jest prowadzenie wspólnego przedsiębiorstwa, którego przedmiotem jest:

- 1) organizowanie różnorodnych form wypoczynku i rekreacji dla dorosłych, dzieci i młodzieży, w kraju i za granicą,
- 2) świadczenie usług turystycznych, hotelarskich, gastronomicznych, z zakresu podnoszenia kwalifikacji zawodowych i ogólnych,
- 3) organizowanie imprez kulturalnych, sportowych i rekreacyjnych,
- 4) świadczenie usług leczniczych i leczniczo-uzdrowiskowych oraz prowadzenie aptek,

- 5) prowadzenie działalności remontowo-budowlanej w zakresie budownictwa mieszkaniowego, przemysłowego i socjalnego,
- 6) prowadzenie działalności handlowej (w tym również w dziedzinie handlu zagranicznego) oraz świadczenie usług handlowych, reklamowych, marketingowych, z zakresu finansów i księgowości,
- 7) produkcja i przetwórstwo artykułów spożywczych,
- 8) produkcja zabawek i pamiątek regionalnych.

Kapitał zakładowy Spółki wynosi 3 miliardy złotych, w tym wartość wkładów niepieniężnych (aportów) 1 miliard 100 milionów złotych.

Stosownie do umowy Spółki Wspólnicy mogą mieć więcej niż jeden udział, którego wartość ustalono na 3 miliony złotych.

Do Zarządu Spółki zostali powołani:

- 1) Jan Wiśniewski - przedstawiciel Przedsiębiorstwa Robót Drogowych w Warszawie - jako Prezes Spółki,
- 2) Jerzy Królak - przedstawiciel Wspólniczki Katarzyny Dębskiej, posiadającej największą liczbę udziałów spośród wspólników będących osobami fizycznymi.
- 3) - Członek Zarządu nie będący wspólnikiem,
- 4) - wspólnik, członek Zarządu,
- 5) - wspólnik, członek Zarządu.

Do składania oświadczenia woli oraz dokonywania czynności prawnych pociągających za sobą powstanie zobowiązań lub zmian w majątku Spółki upoważnieni są:

- 1) w sprawach nie przekraczających zakresu zwykłego zarządu - Prezes lub inny członek Zarządu,
- 2) w pozostałych sprawach - Prezes lub Wiceprezes wspólnie z jednym z pozostałych członków Zarządu, prokurentem lub pełnomocnikiem.

Informując o powyższym Zarząd potwierdza fakt wniesienia przez wspólników wkładów pieniężnych i przejęcia ich przez Spółkę.

Zarząd:

- (-) Jan Wiśniewski
- (-) Jerzy Królak
- (-)
- (-)
- (-)

Załącznik 5

- 1) notarialna umowa spółki,
- 2) oświadczenie Zarządu o zgromadzeniu kapitału zakładowego,
- 3) wyciąg z uchwały Zgromadzenia Wspólników o ustanowieniu władz,
- 4) lista wspólników z podaniem liczby i wysokości posiadanych przez nich udziałów,
- 5) wzory podpisów członków Zarządu.

Appendix 11. Tax Implications for Separating Housing and Other Social Assets from Enterprise Productive Operations

NOTE: This Appendix is written based on laws in effect in September 1992, which may have changed. Further, the information is presented for overall guidance; it is not intended as a definitive source, and should not be viewed as tax advice. An enterprise or investors should consult competent tax counsel to consider their unique situation before taking any actions.

INTRODUCTION

In the course of privatizing a number of its business enterprises, the Government of Poland is confronted with the issue of separating certain social welfare or consumption aspects of enterprises from their productive elements. Continued ownership and maintenance of employee housing and other "non-operating" business assets are in effect expensive subsidies to employees and even some non-employees, an expense which few of the enterprises can afford. The burden placed on such companies by the continuance of subsidies threatens their economic viability and certainly distorts their economic efficiency.

This appendix describes tax implications under Polish tax law that would attend the separation of non-productive from productive units of industry. Although the main focus is on separation of housing, the problems are similar in cases of divesting other non-productive assets, such as vacation homes and kindergartens. From a tax policy viewpoint, it is important to examine the transfers of property as it affects both the transferor and the transferee. Tax consequences for each party might be very different within the same transaction. The goal is to analyze the alternative options and point out the advantages and disadvantages of each one.

Two types of potential tax liabilities are involved in real estate transactions. The first is the tax on income derived from transfer of property, whether by sale or gift. The second is the annual tax liability incurred by all owners of real property, the amount of which is determined by the gmina;¹ the tax rate, however, cannot exceed monthly amounts set forth in the Law on Local Taxes of 12 Jan. 1991 (Journal of Laws of 30 Jan. 1991, No. 9, Item 31; amended, Journal of Laws of 1991, No. 101, Item 444, Journal of Laws of 1992, No. 21, Item 86) [hereinafter Law on Local Taxes]. According to this Law, the tax on apartments can not be higher than 690 zlotys per 1 sq. meter of usable space (*Id.* Art. 5.1.(1)). In case of other real estate, the amount differs depending on the use of such property. The highest amount is assessed on buildings in which some type of economic activity is carried out. Tax on vacation homes and hotels, which are included within the definition of economic activity for the purposes of this law,² is as high as 26,000 zlotys per

¹ Gmina is an administrative unit of regional government.

²See Law on Local Taxes, Art. 5.2 (1).

1 sq. meter (Id., Art. 5.1(2)). Tax is also assessed on the land: 860 zlotys per 1 sq. meter of land associated with economic activity, and 86 zlotys per 1 sq. meter for other land (Id., Art. 5.1(5), Art. 2).

This appendix discusses the income tax consequences resulting from the transfer of property from enterprises to other parties. The two alternative methods of separating productive from non-productive assets, namely sale or gift, as well as their variations, are discussed below.

The following issues involved in separating productive from non-productive assets are analyzed:

I. Sale of Property to Natural Persons by Enterprises (both to employees and non-employees)

1. Outright Cash Sale

- A. Tax Consequences for Enterprises
- B. Tax Consequences for Natural Persons

2. Instalment Sale

- A. Tax Consequences for Enterprises
- B. Tax Consequences for Natural Persons

II. Transfer of Ownership of the Housing Unit Without Consideration

1. Transfer to Natural Persons

- A. Tax Consequences for Recipients (Natural Persons)
- B. Tax Consequences for Donors (Enterprises)

2. Transfer to Other Legal Persons

- A. Tax Consequences for Recipients (Legal Persons)
- B. Tax Consequences for Donors (Enterprises)

III. General Comments on the Ways to Take Advantage of Tax Regulations in Divesting of Non-Productive Assets of Enterprises

- 1. General Encouragement to Own Housing
- 2. Incentive to Build New Apartments by Enterprises

I. SALE OF PROPERTY TO NATURAL PERSONS BY ENTERPRISES (BOTH TO EMPLOYEES AND NON-EMPLOYEES)

1. Outright Cash Sale

A. Tax Consequences for Enterprises

a. Sale of Assets at Market Price

Under the Polish tax law, enterprises have to pay a tax of 40% on gains from sale of property. Even though the percentage rate of taxation is 40%, when a company divests its housing and other non-productive assets, the actual amount subject to tax will depend on the value adjustment of the asset to account for inflation. In certain circumstances, a company is allowed to "step-up" the value of its fixed assets based on indexes prepared by the Ministry of Finance to account for inflation.

The taxation of enterprises and other legal persons is regulated by the Corporate Income Tax Law of 15 Feb. 1992 (Journal of Laws of 1992, No. 21, Item 86) [hereinafter Corporate Income Tax]. According to Art. 7.1, "[i]ncome tax shall be payable on all income, irrespective of the source of income." Income shall be taken to be the balance of total earnings remaining after the deduction of costs in a given tax year (See, Art. 7.2). In the case of fixed assets, however, expenditures on fixed assets, after reduction by the amount of depreciation, do not constitute costs of earnings when incurred but constitute costs of earnings for purposes of establishing income from the sale of the assets.³ Thus, gains from the sale of housing and other non-productive assets of the company will be added to a company's total taxable income, unless otherwise exempted.

The corporate tax on an enterprise is applied at a rate of 40% of its tax base (Id., Art. 19). The tax base is essentially income less certain specified deductions.⁴ It is critical to estimate carefully the proper amount of taxable income, since these calculations may determine the economic feasibility of the transfer.

The impact of taxation on a transaction is amplified by the fact that, under the Polish tax system, corporate taxpayers have to pay their taxes on a monthly basis. According to Art. 25 of the Corporate Income Tax Law, each taxpayer must file a monthly declaration from the beginning of the tax year and must pay monthly advances corresponding to the difference between the tax payable on income earned from the beginning of the tax year and the sum of advances payable for the preceding months. Thus, shortly after the taxable event takes place, taxes become due.

Monthly rather than annual tax payments are driven by the budgetary needs of Poland. They are also vestiges of the former political system, under which the state, simultaneously with receiving monthly tax advances from enterprises, granted them generous monthly subsidies and donations. Now, with the state subsidies almost gone, the tax system creates a greater drain of cash reserves from enterprises than previously when many tax burdens were offset by cash subsidies.

The high inflation which the Polish economy has experienced over the last few years

³ "The following shall not be included in costs of earnings: (1) expenditure on the acquisition of land or the rights of perpetual usufruct thereto, and expenditure or own production of other fixed assets and intangible and legal assets, where these assets are subject to depreciation provisions; . . . [such expenditures, however,] shall constitute costs of earnings for the purpose of establishing the income from the sale of goods and property rights, irrespective of the time these expenditures were performed." Art. 16 (1), Corporate Income Tax.

Beyond the specific provisions for fixed assets, the Law generally states that costs of earnings are deductible only in the year to which they are related, apparently making such deductions available on an accrual rather than a cash basis. See Art. 15.4, Corporate Income Tax.

⁴See Art. 18.1, Corporate Income Tax.

has resulted in huge differences between the historical costs of buildings and their current market prices. As depreciation reduces the cost of earnings for fixed assets,⁵ the differences are further enlarged. Even if these original costs are adjusted as permitted by Article 15 to take into account costs of repairs,⁶ preparation for sale or the like, the resulting gain would in absolute terms be large.

This problem, however, has been somewhat ameliorated. In order to restore balance to the price and value system in Poland, companies are allowed to adjust fixed asset values (See Art. 15.5, Corporate Income Tax). The process of updating the valuation of companies' holdings allows a "step up" in the cost of earnings, or L.C.D. basis, of fixed assets, compensating for inflationary distortions and reducing the taxable gain. According to Article 11.1 of the Ordinance of the Minister of Finance of 27 March 1992 (Journal of Laws, No. 30, Item 130), legal persons may adjust the value of their fixed assets through the process of adjusting the gross book value (księgowej wartości brutto) and the value of asset depreciation. The Ordinance defines fixed assets as assets which were purchased or produced at a cost higher than 10 million zlotys⁷ and which have a useful life exceeding one year (Id., Art. 2.1). In cases when the state enterprise is being prepared for privatization (changes its legal status from the state enterprise to a sole-shareholder company of the State Treasury), the Ordinance mandates value adjustment on the day preceding the transformation, using the values and prices which would have to be paid if new fixed assets were purchased (Id., Art. 12.1, 12.2). The fixed asset value adjustment does not constitute a taxable event; the operation involves purely technical changes in bookkeeping of the enterprise.

As a result of performing fixed asset value adjustment, the gain on sale can be relatively small, and thus the enterprise's tax on gain can be low.

b. Sale of Assets at a Discount

Enterprises may want to sell apartments at a discount, especially when they sell to their own employees. Selling below the market value might create problems under the Corporate Income Tax Law.

⁵An issue may arise in certain circumstances whether depreciation that would have been taken into account before the enactment of the Corporate Tax Law should be deducted from the cost of earnings as such depreciation may not have generated a tax benefit at the time accrued.

⁶Issues abound as to whether such costs should be deducted at the time incurred or in connection with the sale, that is whether the costs are current expenses or capital in nature. See Art. 15.4. In addition, if maintenance or other current costs were incurred prior to enactment of the Corporate Tax Law and thus were not the source of a tax benefit, they should be added to the costs of earnings at the time of sale.

⁷ In accordance with the last amendment to the Ordinance of the Minister of Finance from 27 March 1992 concerning fixed assets (Journal of Laws No. 30, Item 130, amended Journal of Laws, 1992, No. 130 Item 524).

When the enterprise sells real estate, earnings from the sale constitute their value as expressed in the contract of sale (See Art. 14.1, Corporate Income Tax). However, tax authorities have the right to question the price stated in the contract if it differs substantially from the market value of the real estate (Id.). In such cases, the tax office reserves the right to determine the earnings by reference to the market value of the goods concerned.⁸ When summoned by the tax authorities to change the value expressed in the contract of sale, the parties have to either adjust the said value or to justify the price difference (Id., Art. 14.3). If the summoned party does not reply, the tax office, with the help of experts, will determine the market price; in cases where the value so determined differs by at least 33% from the value expressed in the contract, the seller would also have to pay the experts' fees (Id.).

Apparently, enterprises will have to come up with plausible reasons for lowering the prices of their apartments in order to avoid paying taxes in the amounts due if the apartments were sold at market value. It is not certain what kind of justifications would be acceptable to the tax office. The Corporate Tax Law requires only that there has to be a **reasonable cause** for a price differential (Id., Art. 14.1). That is not a high standard and should be easily met by enterprises, which in most cases have a plethora of valid social and economic reasons for wanting to quickly dispose of their non-productive assets.

B. Tax Consequences for Natural Persons

a. Disadvantages

There are no tax disadvantages apart from routine payments such as notary fees and local taxes if the sale price is at fair market value. If, however, the sale price is less than such a value, questions may be raised whether the difference constitutes a taxable gift or other taxable income.⁹

b. Advantages

(1) Tax Law Preference for Ownership Over Rental of Real Estate

According to the Personal Income Tax Act of 26 July 1991 (Journal of Laws No. 30, Item 350) [hereinafter Personal Income Tax], the rent value of the apartment is not imputed to the owner and it is not included in his taxable income. Article 16.2 states that "where the owner of real estate uses it for his own needs or for the needs of family members, . . . the rent value of said real estate or part thereof shall not be determined." Thus, since income is not imputed to the owner of an apartment, he does not pay taxes on the value of rent he/she realizes as a result of owning an apartment. On the other hand, if the enterprise continues to own the apartment and lets it out to the employee free of rent, the equivalent

⁸"The market value of real estate and other goods shall be determined on the basis of the average prices obtained in a given locality in the sale of goods of the same kind and quality, with account taken of their condition and degree of wear and tear. . . ." Art. 14.2, Corporate Income Tax.

⁹For an analysis of this issue, see this Appendix, Part II, section 1, A (Transfer of Ownership of the Housing Unit Without Consideration, Tax Consequences for Recipients).

of the value of rent the employee would have to pay for such apartment is imputed to him¹⁰ and constitutes his earnings (See, Art. 12.3(3), Personal Income Tax).¹¹ Since enterprises subsidize their employees by collecting only 30% of fair market value of the rent, one could argue, based on one interpretation of the law, that the remaining 70% which the enterprise has to expend for maintenance of the apartments is a free benefit, given out to employees and non-employees, and thereby should be included in their income and taxed accordingly.¹²

Such difference in tax treatment between owners and renters of enterprise housing could be an incentive for tenants to buy the apartments from the enterprise, particularly for non-employee renters for whom the enterprise may be less willing to provide subsidies.

(2) Tax Law Incentives to Invest in Housing

A taxpayer who expends funds to satisfy his housing needs is eligible for a tax deduction. According to Art. 26.1(5)(d) of the Personal Income Tax Law, the "tax base . . . shall be the income . . . after deducting the amount of . . . (5) expenditures on housing needs of the taxpayer, used for (d) purchase of a residential building or apartment in such building from persons who have constructed the building in question within their business operations." Such expenditures may be deducted where they do not constitute a cost of earnings or are not refunded to the taxpayer in any other form (*Id.*, Art. 26.7).¹³ The amount of deduction is limited by Art. 26.3 and must not "exceed the product of 70 sq. meters of usable area and a conversion coefficient for 1 sq. meter of usable area in a residential building, as set for the purpose of calculating guarantee premium on housing-

¹⁰Although the value of rent of some accommodations, provided to employees as free benefits, is exempted from income tax, such exemption applies only in limited cases. The law exempts from income the value of rent in workers' hostels, in private apartments hired for the purpose of collective accommodation, and also the value of rent for employees employed outside their place of permanent residence. See Art. 21.1 (19), Personal Income Tax.

¹¹According to Article 11.1 of the Personal Income Tax, taxable earnings, in general, include free benefits. The value of free benefits derived from the relation of employment, including providing an apartment, is also included in taxable earnings. See *id.*, Art. 12.1.

¹²See Personal Income Tax, Art. 12.1 (defining the earnings received as a result of a labor relation to mean money value of benefits in kind, for instance the value of an apartment).

¹³ Such deduction is not granted to the extent the taxpayer used credit to purchase the apartment. In such cases, the amount of credit or loan shall be subtracted from the sums spent for the said purposes, but the repayment of said credit or loan including principal and interest shall be deducted in the years in which these repayments are made. See Personal Income Tax, Art. 26.10.

linked savings deposits¹⁴ for the third quarter of the year preceding the tax year in question" (*Id.*). The maximum amount of deduction for 1992, estimated in accordance with the conversion rate, cannot be higher than 247,800,000 zlotys.¹⁵ Since most apartments in Poland are smaller than 70 sq. meters and were selling in 1992 for less than \$20,000, the taxpayers should be able to take advantage of this deduction, as long as their deduction does not exceed the maximum allowable amount.

The only limitation imposed by the law on a tax deduction for the taxpayer who expends funds to buy his own house is that the real property bought had to be purchased "from persons who have constructed the building in question within their business operations" (Art. 26.7, Personal Income Tax). It could become an impediment when the company transfers its apartments to another entity, since in such cases, the taxpayer would not be eligible for a tax deduction, because the new owner obviously did not participate in the construction. The law seems to discourage the interim ownership of housing. The policy is obviously aimed at encouraging more construction. On the other hand, interim owners could facilitate the process of transfer and should not be excluded from the tax breaks given other parties in this area.

2. Instalment Sale:

A. Tax Consequences for Enterprises

Although the amount of tax may be low, it becomes due all at once upon the completion of the transaction when cash sales are involved, which could be a significant burden when many units are sold. It might be more advantageous to sell the housing units to the residents in exchange for some type of instalment obligation. The simple realities of the market, as well as tax considerations, dictate the need to devise some kind of gradual payment plan, underwritten by companies. In some cases, because of the obvious financial constraints facing the inhabitants of the apartments and the lack of widely available, economically feasible mortgages, instalment sales might be the only possible method of sale.

Under the Polish tax law, the tax on instalment sale of non-productive assets is due monthly on each payment, and not on the whole amount of sale at once. Thus, the tax is assessed on the monthly cash actually received, and not on monies due from the sale, but not yet received. According to the Corporate Income Tax Law, "earnings shall constitute monies received and other money values" (emphasis added) (Art. 12.1). Thus, the taxable event takes place only at the moment of receiving the money, rather than at the moment of

¹⁴Guarantee premiums on housing-linked savings deposits are subsidies given by the State Treasury to the holders of such deposits to compensate them for losses incurred as a result of inflation (Ordinance of Council of Ministers of 1990, Journal of Laws No. 72, Item 424).

¹⁵This amount was calculated in accordance with the rates for guarantee premiums for 1992 (Notice of the Minister of Finance from Dec.31, 1991 (Official Gazette, 1992, No.1, Item 8). According to the November 1992 conversion rate of zloty to dollar (14,000-15,000 zlotys to a dollar), the deduction would be limited to apartments worth a maximum \$18,000-\$20,000.

signing the sale contract and the payment obligation becoming due.

This favorable treatment of the sale of **non-productive assets** has to be distinguished from the way tax law treats earnings derived from **economic activity** of the enterprise. According to Article 12.3 of the Corporate Income Tax Law, "[e]arnings connected with economic activity . . . which are received in a given tax year shall also be taken to include earnings receivable even if they are not actually received, less the values of goods returned and bonuses and discounts granted." Thus, it is of critical importance to determine whether a given transaction falls within the scope of an enterprise's economic activity. Since the term "economic activity" is not defined in the Corporate Income Tax Law, one has to look for it in the Law on Economic Activity of 23 Dec. 1988 (Journal of Laws No. 41, Item 324). According to Article 2.1 of this law, economic activity encompasses all activities involving production, construction, trade, and services, undertaken with the goal of generating income for the entity. Unless the enterprise is in the real estate business and the sale of apartments and other non-productive assets is undertaken with the goal of generating income, its attempts to divest such assets would not rise to the level of economic activity.

B. Tax Consequences for Natural Persons

Under the Polish tax law, natural persons are eligible to deduct the cost of earnings incurred for the purpose of obtaining the earnings. (See Art. 22.1, Personal Income Tax). Since interest on liabilities, including loans, is included in the cost of earnings (id., Art. 22.3(6)), natural persons purchasing the apartments on credit would be able to write off their interest on loans taken from the bank or the enterprise itself.

Natural persons are treated liberally by the tax code when they buy real estate on credit, since they are allowed, in certain circumstances, to deduct not only interest, but also principal of the loan. According to Art. 26.10 of the Personal Income Tax, the deductions are allowed in the years in which these repayments are made.¹⁶

II. TRANSFER OF OWNERSHIP OF THE HOUSING UNIT WITHOUT CONSIDERATION

1. Transfer to Natural Persons

A. Tax Consequences for Recipients (Natural Persons)

a. Transfer Considered a Gift

According to the Polish Gift and Inheritance Tax Law of 28 July 1983 (Journal of Laws of 11 Aug. 1983, No. 45, Item 207; amended, Journal of Laws 1989, No. 74, Item 443; Journal of Laws of 1991, No. 82, Item 368) [hereinafter Gift Tax], transfer of apartments free of charge to employees or other natural persons could be considered a gift and thus will trigger the obligation of the recipient to pay gift tax.

The amount of gift tax in Poland is estimated according to the recipient's tax category

¹⁶For a discussion of other advantages of owning real estate, see this Appendix, Part I, Section 1, B (Tax Consequences for Natural Persons, Cash Sale of Property to Natural Persons by Enterprises). See also, Part III.

(See id., Art. 14.1). The lowest tax rate applies to taxpayers who are most directly related to the donors¹⁷ (See id., Art. 14.3 (1)). Natural persons receiving apartments from enterprises would fall into category three, which imposes the highest rate of tax (See id., Art. 14.3 (3), Art. 15). The rate is estimated in relation to the value of the gift and can be anywhere from 17% to 40% of the value of such gift. Since apartments are expensive items, and their value is determined according to the market prices for real estate in a given area (see id., Art. 8.3), the taxpayers receiving them would most likely have to pay the 40% tax rate.

Such a high tax rate would make it difficult to transfer the apartments to employees, who may simply not have enough cash to meet the gift tax obligations, which become due one month after the taxable event takes place.¹⁸

b. Transfer Considered Part of Employees' Compensation

Tax consequences for employees would differ depending on how the transfer of apartments is qualified. In case it is a gift, they would have to pay a flat rate of gift tax (40%), as described above. In case it is considered a part of their compensation, the value of apartments could be included in the employees' taxable income. As a result, the tax in some cases could be as low as 20% of the tax base, depending on the employees' tax bracket. In reality, however, the tax bracket of the employee is likely to change when the value of the apartment is added to his taxable income. In order to remain in the 20% tax bracket, the employee's income has to amount to less than 64,800,000 zlotys per year (See, Art. 27.1, Personal Income Tax). If the income exceeds 129,600,000 zlotys, the taxpayer has to pay 31,536,000 plus 40% of surplus above 129,600,000 zlotys. When the value of an average apartment in Poland is added to the total taxable income of an average Polish taxpayer, his income could very easily exceed 200,000,000 zlotys and thus significantly increase his tax liability.

The same analysis which applies to transfer of apartments free of charge would apply when apartments are sold at a discount; the difference between the market value or the real estate in question and its sale price could be considered either a gift or compensation.¹⁹

B. Tax Consequences for Donors (Enterprises)

a. Transfer Considered a Gift

Transfer of apartments free of charge to employees and other natural persons is theoretically a tax-neutral event for the companies. They cannot include gifts and donations in their costs of earnings (Art. 16 (6), Corporate Income Tax) and they cannot deduct from

¹⁷That rate can be anywhere from 5% to 19%, depending on the value of gift.

¹⁸See § 2.2, Ordinance of Minister of Finance of 11 Sept. 1981 (Journal of Laws of 23 Sept. 1981, No. 23. Item 121).

¹⁹See discussion on sale of apartments at a discount, this appendix Part I, section 1, A (b) (Sale of Assets at a Discount).

their income donations to natural persons (*Id.*, Art. 18.1). As donors, enterprises also do not incur any tax liability when they transfer the real estate free of charge.

However, according to Article 5 of the Gift Tax Law, the gift tax liability is joint and several on donor and recipient. Although the taxes are due from the recipient, if he is unable or unwilling to pay, the donor has to meet the Gift Tax obligations. This provision could create serious problems for enterprises who might be faced with paying a steep tax on behalf on their impoverished employees.

b. Transfer Considered Part of Employees' Compensation

An area of uncertainty, which has to be considered, is how the transfer of apartments free of charge would be treated. If it is considered a gift, then the above analysis on Gift Tax applies. On the other hand, if it is qualified as part of employees' compensation for work, then the enterprise might have to pay tax on increase of compensation [Popiwek Tax] (*See* Journal of Law of 1991, No. 1, Item 1; amended, Journal of Laws of 1992, No. 21, Item 85; No. 73, Item 361).²⁰ Although the Council of Ministers Ordinance of 23 July 1991 (Journal of Laws No. 73, Item 322) states that for the purpose of the Popiwek Tax Law, the rent subsidies provided by enterprises to their employees are not considered employee compensation, the regulations do not deal with the popiwek tax on free transfer or discount sale of apartments (*See id.*, § 1(7)). The Popiwek Tax Law also states that compensation, for the purposes of this law, includes the value of benefits in kind and their equivalents (*See* Art. 2.1, Popiwek Tax). Subsidizing employee housing would certainly fall into the "benefit in kind" category.

In case enterprises have to pay Popiwek taxes on the compensation, they should be able to deduct costs of such compensation as cost incurred to obtain earnings (*See* Art. 15, Corporate Income Tax). The cost would be estimated as the market value of apartments transferred free of charge or the difference in price between the market value and a discount price charged to employees.

2. Transfer to Other Legal Persons

A. Tax consequences for Recipients (Transferees)

The enterprise may want to transfer the housing and other social assets to another legal person without consideration. Under the Corporate Income Tax, acquisition of such assets would normally be a taxable event to a recipient. Taxable income is made up of the balance of total earnings remaining after the deduction of costs (*Id.*, Art. 7.2). According to Art. 12.1, "earnings shall constitute monies received and other money values, including those arising from exchange rate differentials, **the value of earnings in kind**, and also the value of free benefits obtained" (emphasis added) (*Id.*). Thus, if a legal person receives goods rather than money, the value of such goods will be calculated and included in its total taxable income. The calculation of value is done according to Art. 12.5, on the basis of the "average prices obtained in a given locality in transactions involving goods of the same kind

²⁰Popiwek is the anti-inflationary tax imposed on enterprises which attempt to increase the salaries of their employees.

and quality" (Id.).

In order to enable legal persons to transfer and receive certain kinds of non-productive assets without incurring tax liability, the Minister of Finance issued an Ordinance of 9 Oct. 1992 (Journal of Laws No. 78, Item 396), which exempts both transferor and transferee from income tax on earnings in kind. This ordinance amends §§ 7 and 8 of the Ordinance of the Minister of Finance of 3 Apr. 1992 (Journal of Laws No. 32, Item 139). The new § 7.4 states that income, taxpayers receive as a result of acquiring enterprise housing and other social assets free of charge from a state enterprise, a communal enterprise, or from a sole-shareholder company of the State Treasury (*jednoosobowa spółka Skarbu Państwa*) is not taxable (Id., § 1). According to the new § 8.2, the legal persons entitled to this exemption lose their eligibility if they dispose of the fixed assets (transfer their ownership) or change the purpose for which they are used within five years from the date of transfer (Id., § 1). This last restriction is meant to discourage legal persons, who receive the assets for free, from taking an undue advantage of the tax break given to them. In particular, the legislative intent was to assure a steady custodian for socially sensitive assets the enterprises dispose of, such as apartments, which seldom bring profits under the current legal system. The law intends to discourage a fast sale of assets, thereby assuring certain degree of stability to the employees of privatized enterprises.

This new provision greatly facilitates transfer of apartments to entities such as limited liability companies or *gminas*, which under previous tax regulations had to pay hefty taxes. It should enable enterprises to transfer unprofitable housing units, vacation homes and other social assets to a wider range of recipients.

Thus far, the most advantageous legal form for transferring social assets, from the tax point of view, was a foundation. According to Article 16 of the Law on Foundations of 6 Apr. 1984 (Journal of Laws of 1991, No. 46, Item 203), the foundation does not have to pay taxes on gifts, inheritances, or transfer of assets from other economic entities. They are also exempted from corporate income tax (See Art. 17.1 (4), Corporate Income Tax). However, apart from tax benefits, foundations are not the best legal entities for conducting business activities, since the law imposes numerous restrictions and regulations upon them. A foundation is an institution that operates for a specific social or economic "useful" purpose; it can engage in economic activity only within the scope that encompasses its goals (Art. 5.5, Law on Foundations). When the goal of the foundation is achieved, the foundation is liquidated (Id., Art. 15.1). Once the foundation is established it cannot change its mission, unless its statute is changed (Id., Art. 11.1). It also has to be supervised by the Minister proper to the purpose of the foundation (Id., Art. 12.2). The main purpose of foundations is not to increase profits, but to accomplish socially valuable goals; hence, the foundation is an awkward form for conducting business activities, but could be an appropriate form for certain social assets whose function is to provide a service or benefit to employees, not make a profit.

The new tax law²¹ will open up several new options, besides transfer to foundations,

²¹ Ordinance of 9 Oct. 1992 (Journal of Laws No. 78, Item 396), which exempts both transferor and transferee from income tax on earnings in kind.

for enterprises wishing to divest their ancillary assets. It will certainly make it possible to convey the enterprises' non-productive assets to gminas, thereby transferring the public service duties to entities better equipped to deal with them.

This tax exemption will also open up another advantageous legal form for separation of ancillary assets, namely the limited liability company, which is fairly similar to the American closed (private) corporation. The enterprise could separate its non-productive assets by transferring them to a limited liability company, created for that purpose. Assets could be also transferred to a joint-stock company, which would be particularly suitable in cases where the numbers and values of non-productive resources are great.²²

Under the Polish Commercial Code, a limited liability company is a flexible, easy to establish legal form for doing business (See Art. 158-306, The Commercial Code, Journal of Laws of 27 June 1934, No. 57, Item 502 with later amendments) [hereinafter Commercial Code]. Only one founder is necessary, and the minimum capital requirement is 40 million zlotys.²³

Shareholders are free to negotiate how profits will be distributed, how voting rights will be assigned and exercised, how large the majority vote and quorum must be to validate the shareholders' general meetings, and how rights to choose representatives on the supervisory and management boards will be allocated. A partner's share is transferable by statute, although the law permits the company's articles of association to make transferability contingent upon the consent of the company's board or shareholders. The Polish Commercial Code places no maximum limit on the number of people who may constitute a limited liability company, which makes it more flexible than similar legal forms in other systems, such as the French, under which limited liability companies must automatically transform to joint-stock companies after reaching a certain membership.²⁴

The Polish joint-stock company resembles the American public corporation (See Art. 307-497, Commercial Code). At least three founders are necessary, and the minimum capital of one billion zlotys is required. This may include value of in-kind contributions, which are evaluated by auditors.²⁵ Such audits can be expensive, but if the enterprise can contribute its non-productive assets as part of a company's initial capital, then a joint-stock company could become an attractive legal form for separating, divesting or privatizing social assets.

²² A Joint-stock company would be suitable in cases when the pooling of assets takes place.

²³ It is an equivalent of \$3,000.

²⁴ The limited liability company is similar to the French S.A.R.L. (societe a responsabilite limitee), which cannot have more than 49 members. When this number is exceeded, the company must transform into joint-stock company.

²⁵ Although all shares must be issued, not all capital must be paid-in up-front. Only 25% of the value of registered shares must be paid-in. This is considered an advantage over the limited liability company, for which all capital must be paid-in up-front.

The principles of transparency, common to western corporate statutes, are also incorporated into provisions on joint-stock companies. This can be a disadvantage, since disclosure requirements are cumbersome and expensive. Companies have to make their financial data available at both the court of registration and the Ministry of Industry and Trade, and announcements of public subscriptions, including investor information, are mandatory.

Of the two corporate forms allowed by the Commercial Code, the limited liability form imposes less rigorous requirements on shareholders than the joint-stock form and it is less cumbersome bureaucratically. Its minimum capital requirement is lower, not all capital must be paid-in up-front, and the procedures for evaluating contributions and making decisions on corporate governance are less strict.

B. Tax Consequences for Donors (Transferors)

Under § 7.6 of the Minister of Finance Ordinance of 9 Oct. 1992 (Journal of Laws No. 78, Item 396), the transfer of certain types of fixed assets, such as apartments or vacation homes, by the state enterprises, sole-shareholder companies of the State Treasury, or communal enterprises, to other legal persons, does not constitute a taxable event. The income derived from such transactions, in the amount equal to the value of such assets, is exempted from tax.

III. GENERAL COMMENTS ON TAXATION IN DIVESTING NON-PRODUCTIVE ASSETS OF ENTERPRISES

1. General Encouragement to Own Housing

Under the Personal Income Tax, natural persons do not have to consolidate the income from sale of real estate with income from other sources (See Art. 28.1, Personal Income Tax). The taxpayers make a lump-sum payment of 10% of the earnings received in a particular transaction (Id., Art. 28.2). Such a low tax rate is justified, because the tax is paid on the whole amount of earnings, and not on gain, as is the case for legal persons.

Another advantage house owners in Poland have is the ability to roll over the tax from sale of their residence if they use the money to purchase another residence within one year of sale (See Art. 21.1 (32), Personal Income Tax). This exemption encourages people to keep reinvesting their money in real estate.

2. Incentive to Build New Apartments by Enterprises

The Corporate Tax Law encourages expenditures on the construction of new housing with the intent to rent it by allowing the taxpayer to deduct the cost of such construction (See, Art. 18.1 (4)). Thus, companies can build inexpensive housing and relocate those tenants who cannot afford to buy out their enterprise housing. The enterprise apartments could then be sold. Since the law discourages the construction and then sale of such housing by recapturing the tax benefit if the taxpayer sells the unit which was built with the intention to rent (See, Art. 18.5), an enterprise might want to create a subsidiary to manage the new

housing development. That way, the company would be able to keep its tax benefit, but would delegate the task of administering the apartments to a separate legal entity, such as a cooperative or a limited liability company.

NOTE: This Appendix is written based on laws in effect in September 1992, which may have changed. Further, the information is presented for overall guidance; it is not intended as a definitive source, and should not be viewed as tax advice. An enterprise or investors should consult competent tax counsel to consider their unique situation before taking any actions.

Appendix 12. Review of Polish Housing Laws

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 - A. Status of Housing Laws in Poland
 - B. Legal Restrictions
 - C. Privatization Barriers: Implications of Housing Laws on Enterprise Apartments
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- II. Categories of Owners and Users of Housing
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 - D. Inability to Privatize Enterprise Apartments Separately from Privatization of State-Owned Enterprises

I. INTRODUCTION

A. Status of Housing Law in Poland

There is no separate area of law in Poland that includes all provisions related to housing construction, finance and the rights and responsibilities of owners and tenants. Nor have provisions regulating housing issues in Poland been revised to reflect the changes resulting from the shift to a market economy. Under the former Communist government, a major assumption in defining the principles of construction and usage of apartments was that the State held primary responsibility for meeting all housing needs for society. Although the economic situation in Poland has changed and the responsibility of housing-related decisions rests more with the individual, this is not yet fully reflected in the current housing law.

Housing related legal issues are regulated by three laws:

The Civil Code (Law of 23 Apr. 1963; Journal of Laws No. 16, Item 93; with later amendments), which is the most systemic and broadest compilation of legal provisions, provides a comprehensive regulation of issues of ownership of lands and (Book II, title I ("Ownership")) and the related rights and responsibilities of owners. The remaining

provisions concerning various types of ownership, construction¹ and usage of apartments are general and must be considered in the context of other laws.

In effect, the Civil Code is a legal framework and most legal problems require more specific regulations.² Specific housing regulations can be found in the **Housing Law** (10 Apr. 1974; Journal of Laws of 1987, No. 30, Item 165, amended, hereinafter "Housing Law") and the **Cooperative Law** (September 16, 1982; Journal of Laws No. 30, Item 210, amended, hereinafter "Cooperative Law") and in numerous ministerial decrees.

B. Legal Restrictions

Under the centrally planned economy in Poland housing legislation was designed to fulfil policy goals that restricted ownership rights and usage of housing units. In the current market economy this policy sometimes appears restrictive, and inconsistent.

For example, the amount of allowable living area in an apartment was determined based on administrative decisions and urban planning considerations.³ Limiting the number of apartments a family may own is another example of non-market regulation of housing choice. Provisions in the Polish Cooperative Law (Art. 206) and Housing Law (Art. 28), continue to prohibit a family from occupying more than one living unit. Should a family acquire the rights to additional units, the law may require the family to relinquish its occupancy rights to those other units.

The legal rights of the tenant, under the law as in force in the fall 1992, are greater than those of the owner of the unit. For example, when a family is living in a communal apartment in which the registered tenant dies, under the law, the whole family takes over the tenancy relationship. With respect to a cooperative apartment of the tenancy type, tenancy rights terminate upon the death of the cooperative member and only one member of the family of the deceased is eligible to claim those rights provided that person joins the cooperative (Art. 221, Cooperative Law).⁴ When the owner of a cooperative apartment of the ownership type dies, only one heir of the deceased member of the cooperative can inherit the apartment, provided that this heir becomes the member of the cooperative and pays the inheritance tax (Art. 228, Cooperative Law).

Eviction of a tenant is an additional problem. In effect, although legally permissible,

¹ Contract for Construction, Work Civil Code, Art. 647-658.

² The principle of Polish Law is that a specific law derogates a general law.

³ Although it was argued that floor space per person was limited due to economic reasons, ideological and other goals also played a role. For example, the ban on enlarging a single family house, if its owner can afford such an investment, is difficult to justify on purely economic grounds.

⁴ Article 218 of Cooperative Law states that, "[t]enant rights to a housing unit cannot be transferred, inherited and is not subject to enforcement."

it is virtually unenforceable. In most cases it is impossible to remove a tenant from the apartment unless the tenant is provided with a different apartment. Thus, eviction is more a theoretical than a practical option.⁵

C. Privatization Barriers: Implications of Housing Law on Privatization of Enterprise Apartments

There are four major barriers to privatizing housing. They are:

(1) Financial Barriers

At present, the costs of building, purchasing or maintaining housing units are higher than the average Polish citizen can afford. Loans are expensive in Poland and difficult to obtain.⁶ Even when loans become more readily available it may still be difficult for the average Polish citizen to qualify due to lack of income or collateral.

Under new credit policy regulations for housing construction, which among other things abolished the cancellation of debt payments, people who had been waiting for apartments were often forced to abandon their purchase just as construction was actually completed ("Rzeczpospolita" Daily of 27 March, 5 May and 15 May 1992).

The high cost of loans in Poland, combined with other inefficiencies result in the cost of construction materials in Poland often being more expensive than the import of similar materials from other countries.

(2) Legal Barriers

The existing legal statutes concerning housing construction and privatization are vague and incomplete. There are no explicit interpretations of existing laws, which leads to uncertainty, and, thereby, makes business operations difficult. In addition, the laws regulating ownership of land and buildings are still incomplete.

For example, the regulations controlling eviction is a major legal barrier hindering the sale of apartments to third parties.⁷ A tenant cannot be removed from his apartment before a different apartment is assigned to him. If no appropriate apartment is available, the buyer may purchase the apartment, but must allow the tenant to remain.

(3) System and Social Barriers

⁵ See: Persons illegally occupying an apartment, Section II.A.4.

⁶ Over the last few years interest rate on loans in Poland have been as high as 40%-60%. Once inflation has been brought under control, lower loan rates will become feasible and purchase of housing on credit easier. Work on development of mortgage system in Poland is in progress. See, Appendix 14.

⁷ See discussion on eviction. Section II.B.4. of this appendix,

Many Polish citizens do not understand the advantages of home ownership, it may be difficult to convince them to purchase their apartments and assume the responsibility resulting from ownership. Many tenants believe that they are entitled to certain benefits, including the right to occupy their apartments, regardless of their financial or family status.

Polish society is not mobile. Individuals rarely move to another city to seek a job. In Poland, people often remain attached to their place of birth and consequently, the homes they live in. Under circumstances when companies go bankrupt or lay-off large numbers of employees, the desire of individuals to remain in their "home town" may be a serious obstacle. Instead of looking for another job in another town, redundant employees resist moving and continue to occupy company apartments to which they are no longer entitled.

(4) Bureaucratic Barriers

The Law on Privatization of State-Owned Enterprises⁸ gives primary control of the privatization process and procedures to the government. Many phases of privatization work are subject to decisions of officials from the Ministry of Privatization. Given the limited staff resources at the Ministry, the volume and scale of privatization projects often taxes the capacity of the staff, resulting in inevitable delays in the decision making process. In addition, avoidance or delay of decisions for other reasons may also occur. Thus, it may not be possible to make decisions with respect to the sale of enterprise owned housing, until decisions about the privatization of the enterprise are made, thereby postponing the housing decisions.

(5) Motivation Barriers

Current law provides few incentives for tenants to purchase their enterprise owned housing. As residents of the housing, tenants receive a number of benefits related to the occupancy of the company owned apartment. Primary among those benefits is the responsibility of the company (apartment owner) for covering all operating costs. However, the company is only allowed to pass on a fraction of those costs to the tenants.

Rent, which is strictly controlled by the State, generally covers only about 30% of operating costs. It is the responsibility of the enterprise to cover the difference between real operating costs and rental revenue. As the owner of the apartment, the tenants' housing expenditures would be much higher since the company would want to pass along those costs to them.

It is estimated that if rent control was removed, rents would rise to a market rate of approximately 25,000 to 30,000 zlotys per square meter, or about 1.5 million zlotys per month for an average apartment of 50 m² (quoted from "Rzeczpospolita" Daily of 27 May 1992). Taking into account the relatively low incomes in Poland, collection of "market"

⁸Law of 13 July 1990 on Privatization of State Enterprises, Journal of Laws No. 51, Item 298, amended, Journal of Laws of 1991, No. 60, Item 253.

rents would be impossible.⁹

D. Options to Overcome Privatization Barriers

In order to privatize housing effectively, it is necessary to remove barriers such as those discussed above. This can be done by making the purchase of apartments easier, through tax policy, through development of a housing support program to assist those in need, or through the development of a State policy to encourage investment in housing construction. All such solutions are long-term.

A number of options which are currently being considered by the government or others to facilitate home ownership and privatization are described below.

(1) Inexpensive loans

One option for encouraging private home-ownership would be to make available inexpensive credit for which tenants could qualify. Receiving a low-interest loan would allow tenants to buy out their apartments or start construction of new housing. Such a loan program could foster new construction, increase the number of new and available apartments, and make the cost of new construction lower.¹⁰

Another option would be to remove the financial barriers to home ownership. For example, the government would subsidize repayment of part of the debt burden residents have incurred towards the banks, as well as other financial losses incurred by citizens due to the high inflation in Poland in the late 1980s (Law on regulation of credit relationship of 28 Dec. 1989; Journal of Laws No. 74, Item 440, Art. 3). State subsidies for the payment of guarantee premiums on housing-linked savings deposits (Ordinance of the Council of Ministers of 16 Oct. 1990; Journal of Laws No.72, Item 424, § 1) is an example of such assistance. The objective of such guarantee premiums is to adjust housing-linked savings deposit provided that "such savings will be used to satisfy the housing needs of the deposit owner within the following housing construction types: (1) cooperative multi-tenant and single family housing (2) individual, including construction of, single family homes, apartments in small buildings and multi-tenant buildings" (§1.1).

Although guarantee premiums are not directly applicable to the purchase of enterprise apartments, they may be useful for those tenants, who lose the right to their company apartment but who own housing-linked savings deposits. With help of the State, residents will be able to purchase their own apartments or houses and avoid eviction and removal to substitute apartments of much lower standard.

(2) Introduction of Provisions Facilitating the Sale of Apartments.

⁹ The average income in Poland is currently about \$200 per month.

¹⁰ See Appendix 14 for a brief discussion of the Housing Finance Program.

Markets for the transfer and sale of apartments are beginning to develop but are still in their early stages. This process will be accelerated as the law is changed to reflect the new market atmosphere. Eviction and the requirement to provide alternate housing for tenants remains a major obstacle in the development of this market. In addition, the tender requirements for the sale of state assets should be clarified or reconsidered with respect to real estate owned by the State Treasury.¹¹

(3) Transfer of Company Apartments to Gminas (Regional Government).

One of the current proposals with respect to the privatization of enterprise-owned apartments is to transfer them to gminas. Since gminas already manage communal housing as a part of their social services financed from the State budget, transferring enterprise housing may be an option, from the viewpoint of the company, for disposing of their apartments. The transfer of company housing to the gmina would allow the company to invest funds, otherwise spent on housing, on productive investment.

New regulations in effect encourage such transfer. These regulations exempt gminas from income tax on the free transfer of state-enterprise housing to the gmina.¹²

Upon transfer of housing, the gmina has the right to sell all unoccupied apartments, in which legal issues (i.e. title) have been resolved, through a tender process and at market prices. Prior to the offer, a price must be set based on a valuation on the units.¹³ Pursuant to the purchase/sale contract, the buyer becomes the owner or perpetual user of the apartment and the associated land. The contract should be in the form of a notary deed and the real estate should be registered in the land and mortgage register.

In cases when the apartment is occupied, the situation is more difficult. Should the gmina decide to sell the apartment, the Law on Lands Administration and Expropriation of Real Estate,¹⁴ provides that the tenant or a designated member of his family, who is also occupying the apartment, has the right of first refusal to purchase the apartment. Should the tenant reject the purchase offer, the gmina can only sell the apartment to a third party through an open tender procedure. However, the laws on eviction still apply to the current occupant of the apartment, even if it is sold to a third party. Thus, in effect, privatization of gmina owned apartments depends on the ability and willingness of the current residents to purchase their units. Gminas will have considerable difficulties with the sale of

¹¹ See: Ordinance of the Minister of Construction of 19 June 1992 on tenders for sale of the real estate owned by the State Treasury or gminas, Monitor Polski No.21, Item 148.

¹² Ordinance of the Minister of Finance of 9 Oct. 1992; Journal of Laws No. 78, Item 396, § 1. See Appendix 11 for an analysis of this tax issue.

¹³ Valuations can be performed according to the book method or the market method. If the company performs an open tender, a valuation may be unnecessary, see appendix 9.

¹⁴ Art. 21.7 (Law of 29 Apr. 1985; complete text Journal of Laws of 1991, No. 30, Item 127; amended Journal of Laws of 1991, No. 103, Item 446; No. 107, Item 464).

apartments, unless effective regulations are enacted or incentives introduced, since inhabitants might consider tenancy more favorable than ownership.

On the other hand, the law also allows tenants the right to purchase their apartments on a preferential basis, without a tender.¹⁵

(4) The State Policy to Encourage Housing Investments

Since eviction in Poland requires that the tenant be provided with alternate housing, there will be a need to build apartments of relatively low standard. Such apartment could be made available to all those tenants who have to be evicted, since they have no financial means or inclinations to buy out their enterprise housing.

In order to encourage housing construction, the state provides various tax breaks to investors willing to supply inexpensive housing.¹⁶

Since housing construction investments are costly and long-term, it is important to have political, legal and economic stability in Poland in order to attract serious investors.

(5) Adjusting Rents to Market Prices

Charging real rents will make private ownership of apartments more attractive to both the residents and housing investors. However, real rents cannot be achieved until the full cost of maintenance and other expenses can be passed through in the rent. Proposals have been developed in which the State would provide a housing allowance to tenants who could not pay the full cost of renting an apartment. It will be difficult to achieve market rents until such proposals to protect low income residents are implemented.

(6) Changes in the Tax Law Related to Trade in Housing

Another impediment to private ownership of apartments is the inheritance tax. At present this tax is collected even if a housing unit is inherited by the deceased's spouse or children who continue to occupy the apartment. In many cases, the family may not be able to afford the tax, thus discouraging elderly tenants from purchasing their apartments since the family might have difficulty retaining control of it. In this circumstance the family is better off as renters.¹⁷

¹⁵ Compared to provisions concerning privatization of apartments owned by state enterprises, where the tender may be required whether the apartment is occupied or not, legal regulations concerning apartments owned by gminas are beneficial for the tenants. (See Appendix 9, and footnote 20 of this appendix.)

¹⁶A broad discussion of this problem has been included in Appendix 11.

¹⁷Inheritance and Gift Tax Law of 28 July 1983; Journal of Laws of 11 Aug. 1983; No. 45, Item 207.

(7) Cancellation of Requirement of a Public Tender While Selling Housing Owned by State Enterprises

The Law of 29 Apr. 1985 on Land Administration and Expropriation of Real Estate¹⁸ regulating the sale of housing owned by the State Treasury or gmina, provides for certain preferences for the purchase of apartments by their tenants. However, this Law is not applicable to the sale of housing owned by state enterprises.¹⁹

State enterprises have to abide by provisions of the Law on State-Owned Enterprises of 1981, pursuant to which the sale of enterprise fixed assets should be by public tender. The sale of housing is subject to this rule.²⁰

By repealing the tender requirement for the sale of enterprise owned housing, or changing the requirement to reflect the rules of sale for State Treasury or gmina owned housing, the company will have greater flexibility in disposing of its housing stock.

II. CATEGORIES OF OWNERS AND USERS OF HOUSING UNITS

A. Legal Basis for Ownership or Usage of Apartments in Poland

At present the main legal basis of ownership or usage of housing in Poland are as follows: cooperative right to housing unit (both ownership rights and tenancy rights),

¹⁸ Journal of Laws No. 30 of 1991, Item 127; amended.

¹⁹ An amendment of 7 Nov. 1992 to the Law on Lands Administration and Expropriation of Real Estate, allows an enterprise to renounce its property (housing) providing the Gmina accepts it. If this is the case the provisions of the Law on Lands Administration and Expropriation of Real Estate, apply to the residents of the housing.

²⁰ Art.46.3, Law of 25 Sept. 1981 on state enterprises (Journal of Laws of 1991 No. 18, Item 80, amended). Ordinance of Council of Ministers of 25 June 1990 (Journal of Laws No. 45, Item 260) on tender procedures in selling fixed assets by state enterprises and on conditions of renouncement of tenders, does not exclude housing from this rule. However, some commentators believe that enterprise housing should or can be excluded from the tender process if the unit is sold to its occupants. Since there are no regulations which prohibit sale to residents, there are instances where enterprises have sold their apartments to the residents without tender. Before proceeding with such a sale the enterprise should confer with legal counsel.

Should tenants refuse to purchase their unit, sale to a third party through tender is difficult because of the restrictions on eviction. Effectively, the third party must purchase the housing along with its tenants or provide alternate housing to the resident.

contract of tenancy and ownership.²¹ The legal basis for using housing units within the Polish civil law are as follows:

- a. separate ownership of housing unit (property law);
- b. cooperative right (ownership and tenancy) to housing unit (cooperative law);
- c. contract of tenancy (contract and tort law);

According to their rights to use or to occupy apartments both owners and users can be divided into separate categories. Each category ensures the right to use the housing but not all of them ensure ownership.

1. Owners and Tenants with the Right to Dispose of Property

- a. Owners of land and buildings assigned to this land.
- b. Perpetual users of land with ownership rights of buildings constructed on this land.
- c. Owners of apartments purchased from the State Treasury whose rights are executed by gmina

2. Owners with the Limited Right to Dispose of Property

- a. Members of housing cooperatives who have:
 - i. an "ownership" right to the cooperative housing unit;
 - ii. a "tenancy" right to the cooperative housing unit;

3. Persons Occupying Apartments Without Ownership Right

- a. Tenants (Housing Law)
- b. Tenants of apartments on the basis of the contract of tenancy entered into in accordance with articles 659-692 of the Civil Code with persons having full or limited ownership right to housing (owners of land and buildings, owners of buildings constructed on land with perpetual usufruct, owners of apartments purchased from the State Treasury, owners of cooperative apartments, and bodies of local administration i.e. gmina).

4. Persons Occupying Apartments Illegally

5. Other Forms of Apartment Usage

- a. Use (Art. 252-270, Civil Code);
- b. Dwelling easement (Art. 285-305, Civil Code);
- c. Contract of annuity (Art. 908-916, Civil Code).

²¹ There are some other rights of usage of apartments, but for all practical purposes they are of minor importance for the majority of people in Poland.

B. Description of Particular Legal Basis of Usage of Apartments

1. Owners with the Right to Dispose of Property

- a. Owners of land and buildings assigned to this land.
- b. Perpetual users of land with ownership rights of buildings constructed on this land.
- c. Owners of apartments purchased from the State Treasury, whose rights are executed by gmina.

Rights and responsibilities of the above owner groups are thoroughly regulated by the Civil Code of 1964. The primary right of the owner is to dispose of his property freely.

The former communist government policy was to discourage the private ownership of housing. Specifically, private ownership was limited to providing for the specific needs of the owner (i.e. housing could not be owned for profit making purposes). Amendments to the Civil Code of 28 Aug. 1990, abolished a number of the limitations to private ownership, thereby making it more popular. (Journal of Laws No. 55, Item 321, art. 136 and 137 of Civil Code).²²

Procedurally, every real estate transaction (sale or purchase) requires a notarial deed. Each separate parcel or building should have a land and mortgage register in which it is described.

The purchase of real estate by foreigners requires a permit from the Minister of Internal Affairs (Law on purchases of real estate by foreigners of 24 Mar. 1920, Journal of Laws of 1933, No. 35, Item 230, amended Journal of Laws of 1988 No. 41, Item 325).

2. Owners and Tenants with a Limited Right to Dispose of Property:

This group includes members of housing cooperatives who have:

- a. an "ownership" right to the cooperative housing unit
- b. a "tenancy" right to cooperative housing unit;

The rights and responsibilities of members of housing cooperatives are regulated by the Cooperative Law ["CL"] (Art. 213 - 239). An "ownership" right belongs to the category of limited property law (Civil Code, art. 244, Item 1), together with such rights as: mortgages, liens, lending for use and easements. "Tenancy" rights are regulated only under the Cooperative Law.

Members of cooperatives can be divided into two categories: tenants who own cooperative apartments and tenants who rent cooperative apartments. Classification is based on their legal titles to the apartments. The apartment status (ownership or tenancy) depends on the contribution of the member to the costs of construction of the apartment in question.

²² It was possible to purchase an apartment before 1990 but the number of such transaction was relatively small.

In order to acquire the ownership title to the cooperative apartment, the member must contribute the equivalent of the total amount of construction costs of the apartment (Art. 226.1, CL). A cooperative apartment owned by the resident may be sold, donated or inherited. It may also be the subject of a lien or a mortgage security. However, the range of rights resulting from the ownership to such an apartment is narrower than in the case of full ownership because the sale of an ownership right to a cooperative apartment is subject to the condition that a buyer become a member of the cooperative.

A cooperative member is eligible for the "tenancy" right to a cooperative apartment, if he contributes only partial construction costs of the apartment. The value of the contribution is determined by the cooperative, on average this contribution is about 10% of construction costs. Such apartments cannot be sold or inherited (Art. 218, CL). However, if the tenant dies, co-tenants of the deceased may remain in the apartment if they receive cooperative membership. (Art. 221, CL). Upon expiration of the right to a "rental" apartment, it is transferred back to the Cooperative.

3. Persons Occupying Apartment Without Ownership:

Depending on apartment category, its rent may be subject to provisions of either the Housing Law or the law on obligations included in Civil Code.

1. Tenants (legal basis: housing law)
 - (a) of enterprise apartments;
 - (b) of apartments managed by local administration i.e. gmina, also called "communal apartments."

A contract of tenancy is entered into between tenants and the owner. Principles of entering into such contracts, rights and responsibilities of the parties are determined in the Housing Law (Law of 10 Apr. 1974, Journal of Laws of 1987, No. 30, Item 165, amended) and executory provisions issued based on this law. A primary factor limiting the freedom of the parties to determine the terms and value of such a contract of tenancy is the limit on rent imposed by the government.²³ Due to rent control, rental revenues covers only about 30% of operating costs incurred by the owner.

In the event of the death of the tenant, the tenant's immediate family who also occupy the same apartment, have the right to enter into a tenancy relationship (Art. 691, Civil Code).

2. Tenants of apartments on the basis of rent agreement entered into in accordance with articles 659-692 of the Civil Code (legal basis: law on

²³ Ordinance of Council of Ministers of 14 Dec. 1987 on rents for housing units and other facilities (Journal of Laws No. 40, Item 230; amendments: Journal of Laws of 1988, No. 42, Item 330; Journal of Laws of 1989 No. 67, Item 409; Journal of Laws of 1990 No. 51, Item 304; Journal of Laws of 1991, No. 9, Item 33; Journal of Laws of 1992, No. 36, Item 153). See: Calculation of rent, Appendix No. 12A.

obligations) with persons having full or limited ownership right to housing (owners of land and buildings, owners of buildings constructed on land with perpetual usufruct, owners of apartments purchased from the State Treasury, owners of cooperative apartments).

Within the contract of tenancy, parties may determine their rights and responsibilities at their discretion based on provisions of the Civil Code. If a housing unit is privately owned there are no limitations on contracts regardless of whether natural persons or legal persons are the parties of the contract. In particular, there is a principle of freedom of contracts, pursuant to which parties determine rent value and the term of the contract between themselves, without external interference.

Subletting is permissible unless prohibited by the primary contract between the owner and tenant (Art. 668, Civil Code). In the case of "rental" apartments, members of a housing cooperative may let out or lend, free of charge, use of their cooperative apartment upon a consent of the cooperative (art. 219.2, Cooperative Law).

Rules governing contracts of tenancy based on provisions of the Civil Code should be also applicable to the contracts of tenancy for company apartments. These rules allow the parties to negotiate and respect a principle that citizens are capable of regulating their legal relationships without excessive interference from the State. However, in some cases, tenant protection by the State may be desirable or necessary. Such protection is necessary, for instance, where low-income tenants are concerned.

4. Persons Occupying Apartments Illegally

Some apartments in Poland are occupied by individuals who do not have any legal title to them (i.e. they occupy apartments although their contracts were terminated, expired or were never concluded). Although it is possible to terminate a contract, it is often only a partial solution given the restrictions on eviction.

a. Contract of Tenancy Terminated Without Notice

The Civil Code specifies the following circumstances, under which a contract can be terminated by one party without notice:

- (1) if the tenant is in arrears with rent payments for at least two payment periods, has been granted an additional payment period but still remains in arrears (Art. 687);
- (2) if the tenant creates a nuisance to others in the building or improperly uses the facilities of the building (Art. 685);
- (3) if the tenant uses the housing unit in a manner contrary to the contract or its purpose and, in spite of a warning, neglects it to such an extent that it is exposed to loss or damage (Art. 667);
- (4) if the tenant is in delay of rent payment for at least two full periods the lessor may immediately terminate tenancy (Art. 672).

If the duration of the contract of tenancy is not specified and the rent is payable on

a monthly basis, the contract may be terminated at the latest three months in advance at the end of a calendar month (Art. 688).

The housing law permits an option to terminate the contract of tenancy without notice, in cases where the housing unit was made available pursuant to an administrative decision and the tenant allowed for occurrence of such situation as specified in articles 685 and 687 of the Civil Code.

b. Eviction

Eviction of persons occupying apartments illegally is permissible. However, the burden remains on the owner of the apartment to provide alternate housing to the resident. Eviction can be realized only under court order and as long as the person is not evicted "into the street." In other words, substitute housing must be assigned. As defined in Art. 7 of the Housing Law, substitute housing must meet the following standards:

- (1) its technical condition must be acceptable and it must have access to a water supply and toilet, even if these installations are outside the building;
- (2) there must be at least 5 m² of floor space per person;
- (3) it must be located within the same town or village or neighbouring town or village unless moving to this town or village deteriorates the living conditions of the persons removed.

These legal restrictions make the sale of apartments difficult because the owners do not have an unlimited right to dispose or use them. The tenant has the right to continue to occupy the apartment if the owner is not capable of providing appropriate substitute housing. Due to the scarce availability of substitute housing, cases of eviction are very limited. These rights make an occupied apartment difficult to sell. In limited cases where eviction is enforced, police assistance is often required.

In limited instances, owners may be able to raise rents to such high levels as to force tenants to consider alternate housing.²⁴ However, these higher rents may only result in large rent arrears by the tenant, who continues to occupy the apartment.

Over the past few years limited attempts have been made to make eviction of illegal tenants less difficult. Art. 65.5 of the Housing Law, allows banks to pursue claims resulting from defaults on mortgages secured by real estate. In those circumstances, the bank has no responsibility to provide alternate housing. The housing law states that, "[p]ersons who have lost an ownership right to a cooperative apartment or single family house within a housing cooperative as a result of execution of claims secured by a contractual real estate mortgage are not eligible for substitute housing." Unfortunately, the result of this provision may be to discourage private ownership. Should the resident default on the mortgage, he risks eviction without the protections provided to a renter.

²⁴ For example the "Bródno" Housing Cooperative in Warsaw has increased rents by 500% for those tenants who are in arrears.

If a person occupies the apartment illegally from the beginning,²⁵ the law allows for an immediate eviction of such person (Art. 343, Civil Code). In effect, however, the eviction of the illegal tenant may be very difficult.

Pursuant to Art. 65 of the Housing Law, the local body of the State Administration has the right to immediately remove persons who have occupied an apartment illegally. The law allows for police assistance if needed. However, "if the person breaking the law is not removed within six months from the date of illegal entry into the apartment, the local body of State Administration issues a decision of eviction into the apartment occupied previously by such person, and in the case it is not possible - into substitute housing." (Art. 65.4, Housing Law). Such provisions encourage people to break the law.

While occupation of an unoccupied apartment (nobody is registered in the apartment) is a minor infraction of the law, illegal occupation of an apartment for which there is a registered occupant is a more serious crime subject to criminal sanctions.²⁶ A Judicial decision of the Supreme Court in October 1992, strengthened this law with respect to individuals who break into and occupy an apartment during the absence of its owner. According to this Judicial decision eviction without providing substitute housing is permissible.²⁷

III. BASIC PRINCIPLES OF USE AND MAINTENANCE OF APARTMENTS

A. Definition of Minimum Housing Standard in Poland

Polish Law does not define a "minimum housing standard". However Art. 5 of the Housing Law includes the following definitions:

- a. "housing unit": a self-contained structure or part of a larger structure which consists of at least one room with a floor area not smaller than 10 m², if it is rented out as a separate unit.
- b. "a separate housing unit": a grouping of rooms and ancillary facilities which are separated within the building by fixed walls and which do not require the usage of other rooms or facilities located outside the unit.

Cooperative Law also does not define the proper floor area per person. Generally, cooperative statutes refer to "presently existing norms of housing design." The needs of interested persons are not determined on the basis of their wants but on criteria resulting from social policy. Thus, cooperatives have developed a practice to indicate the size of

²⁵ Such persons never had a legal basis for occupying the apartment.

²⁶ Art. 171, Penal Code. Any individual who illegally enters a house or apartment or who does not abandon it, shall be subject to up to two years imprisonment, limitation or fine.

²⁷ Resolution of the Polish Supreme Court, Signature III AZP 15/92, resolution not published as of March 1993.

apartments not by the number of rooms but by the number of residents plus "M".²⁸

These criteria are applicable when apartments are assigned (e.g. cooperative or communal apartment). However, they are not in effect when apartments are purchased on the market.

B. Rent Amount and Designation

1. Rent Determined by a General Act Issued by Authorities

The maintenance and operation of enterprise apartments and other ancillary facilities is a burden on a company budget because companies cannot set rental rates at their discretion. Rent is specified by an Ordinance of Council of Ministers²⁹ and pursuant to provisions of the Housing Law (Art. 15.4). The rent paid by tenants is calculated based on the provisions of the Ordinance and covers only about 30% of real operating costs. Under the general rules of housing law, change of owner of a building does not allow for a change of rental rates as long as tenants retain their status as employees of the enterprise.

In cases when former employees whose employment contracts were terminated, and are tenants of enterprise apartments who are not entitled to other housing, the company has the right to increase their rent by 200% above the calculated rent for their unit (§ 8.6, Ordinance of Council of Ministers on rents). This is not applicable to persons who have a right to an alternate housing unit and who pay the value of rent specified by the Council of Ministers (Art. 17.1, Housing Law). See Appendix 12A for an example of rent calculation.

2. Rent Determined Based on the Contract

Pursuant to provisions of the Housing Law (Art. 14.2), rent limits are not applicable to the following housing categories:

- (1) cooperative apartments;
- (2) single family homes and housing units, at least parts of which are occupied by their owners or the owners immediate family;³⁰

²⁸For example M-1, M-3, M-5.

²⁹Ordinance of Council of Ministers dated 14 Dec. 1987 on rents for housing units and ancillary facilities (Journal of Laws No. 40, Item 230; amendments: Journal of Laws of 1988 No. 42, Item 330; Journal of Laws of 1989 No. 67, Item 409; Journal of Laws of 1990 No. 51, Item 304; Journal of Laws of 1991, No. 9, Item 33; Journal of Laws of 1992, No. 36, Item 153)[hereinafter Ordinance of Council of Minister on rents]. An example of rent calculation is presented in Appendix No. 12A.

³⁰ The term "immediate family" includes: ascendants, descendants, brothers and sisters, children of brothers and sisters, relatives in the same line or level, adopted persons and their spouses and descendants, juveniles adopted for upbringing based on a decision of the guardianship court, persons in a relationship of marriage, and persons who exercise

- (3) houses used as boarding houses, if their owners or their adult children or parents live on the premises and run these boarding houses.

The amount of rent and sub-rent in the above housing categories is determined in a contract by mutual agreement of the parties. Changes of rent specified in the contract must be communicated to the tenant (subtenant) in advance.

Income and the number of family members do not have any impact on rental rates. Persons who are financially unable to pay their rent, may apply for subsidies from various sources, such as Ośrodek Pomocy Społecznej (Social Welfare Center) operating at the gmina, or for subsidies from their companies' social fund.

3. Rent Versus Administrative Costs

The contract of tenancy should specify whether the rent includes other additional costs related to apartment maintenance such as telephone or electricity and who should covers these expenditures - tenant or lessor.

Members of housing cooperatives do not pay rent as such but cover all maintenance and operating expenses of their housing unit and cooperative assets (Art. 208, Cooperative Law). Owners of apartments located in multi-tenant buildings pay a lump sum for utilities, if the apartments are not equipped with separate meters (e.g. gas and water meters). However, these rates do not cover the total costs of the service which must be subsidized from the budget.

C. Housing Maintenance and Operation

1. Maintaining Order

Maintenance of a house and lot is the owner's responsibility (Art. 12, Housing Law). Borders of the property are determined by a geodetic plan. Should the owner neglect this duty, the gmina's office may fine him.

Maintenance of an apartment is the tenant's responsibility (Art. 13, Housing Law). If a tenant, through lack of proper care, causes deterioration of living conditions for other tenants (i.e. insects, floods, noise, etc.), the contract of tenancy or his cooperative membership may be terminated (art. 685, Civil Code). Owners or tenants affected by a negligent neighbour, have the right to request in a court order to cease and desist such infringement.

guardianship over the tenant based on the appropriate contract. (Art. 9 point. 1, Housing Law).

2. Repair or Damage of the Occupied Apartment

Pursuant to the Housing Law,³¹ the tenant has the right to receive alternate housing³² if his apartment has been damaged or is in need of repair. However, a distinction should be made between the two situations and under which circumstances the tenant may be entitled to such an apartment:

- (a) the housing unit (apartment) is damaged to such an extent that its repair is unprofitable and (or) unjustified (this refers exclusively to single family homes because apartments are always suitable for repair, unless the building itself endangers life or health of its inhabitants and damages are such that the building should be destroyed e.g. when ground sinks or caves in)
- (b) the housing unit (apartment) should be repaired.

Entitlement to alternate or substitute housing is based on a case-by-case basis.³³ In some cases, the tenant is not entitled to them:

- (1) **Private Houses and Apartments:** the cost of repair is the responsibility of the owner. The owner does not have a right to alternate housing during the repair. In cases where the house was damaged as a result of an "act of God," (fire, flood) the owner has a right to request the gmina to assign him to substitute housing until the original unit has been rebuilt or replaced. If damage is by third parties (natural or legal persons), the owner has a right to demand from them full damages. During the period of reconstruction (repair work) the third parties should provide the owner with substitute housing, if they have it at their disposal.
- (2) **Enterprise Apartments:** if an enterprise apartment is damaged through no fault of the tenant, the company should assign him another apartment for the period of repair or provide permanent relocation, if repair is impossible. If the tenant is responsible for the damage, the contract of tenancy may be terminated and eviction proceedings undertaken. In this case, the tenant must pay for the damage to the apartment.
- (3) **Cooperative Apartments:** the costs of repair work in the apartment

³¹ See also: Ordinance of Council of Ministers of 9 Nov. 1987 (Journal of Laws No. 36, Item 205).

³² Article 6 of Housing Law specifies requirements set forth for alternative housing.

³³ Substitute apartments, Art. 7, Housing Law.

are covered by the tenant.³⁴ If during repair, tenants must be relocated, the cooperative should ensure them alternate housing during this period. If a tenant damages his apartment to such extent that the damage deteriorates the living conditions of other tenants, the cooperative has the right to exclude him from its membership and conduct eviction proceedings. In this case, the costs of repair of the damaged apartment are the responsibility of the tenant. Repair work outside the apartment is performed by the cooperative. Costs of such repair are financed from a special repair fund.

- (4) **Apartments Rented Contractually:** the contract should specify to what extent the tenant covers the repair costs. If there is no contract, Articles 12 and 13 of the Housing Law and Art. 662, 663, 667, 681 and 684 of the Civil Code are applicable. The owner's responsibility is to ensure the proper technical condition and functioning of the building installation, to maintain the common area, to maintain and repair water, gas and electricity, telephone lines and refuse disposal. The tenant is responsible for the costs of maintenance of floors, windows, doors and air conditioning in the apartment.

IV. LEGAL PROCEDURES IN THE PRIVATIZATION OF HOUSING

A. Regulation of Legal Status of Land and Real Estate owned by State Enterprises

Before privatization procedures can begin, the legal status of enterprise land and buildings should be clarified. For example, enterprise-owned apartments and their land designated for privatization should have ownership titles reviewed prior to beginning the privatization process. There are no legal obligations to settle the legal status but this is a "useful" action. If legal issues, such as titles, are not clarified prior to privatization, it would be extremely difficult to value the enterprise; as a result, the valuation could be performed through administrative action at some future point.

Based on the provisions of Art. 2 point 2 of the Law of 29 Sept. 1990 on changes to the Law on Land Administration and Expropriation of Real Estate (Journal of Laws No. 79, Item 464), State legal persons were granted the land and building occupied by them.³⁵ By virtue of this Law, as of 5 Dec. 1990, management of land owned by the State Treasury is transformed into a perpetual usufruct (use) of the land, and management of buildings is transformed into an ownership right to the buildings of the State legal persons.

³⁴The cooperative covers the costs of general repair work e.g. replacement of pipes.

³⁵ "Buildings and other installations and housing units located on the land owned by the State Treasury . . . which on 5 Dec. 1990 were managed by legal persons, as of this date, by virtue of law, became the property of these persons. If the legal person did not pay the full cost of construction of buildings in question it must first pay that cost in order to gain title." (Art. 2 point 2, Law on Land Administration and Real Estate Expropriation).

1. Determining the Right of Perpetual Usufruct of Land

In order to obtain the right of perpetual usufruct to land, the company had to hold it as of 5 Dec. 1990. Holding must be proved in one of the following ways:

- a. decision by an appropriate body (voivod or head of gmina, depending on value of real estate) to transfer the land under management of the company; or
- b. civil law contracts entered into by the parties upon the consent of the administrative body (no notarial deed required); or
- c. notarial deed, which states that the state organization unit (i.e. state-enterprise) has purchased the real estate in question before 1 Feb. 1989 (not from the State Treasury); or
- d. decision by the body (voivod or head of gmina depending, on the value of the real estate) issued before 1 Aug. 1985 to transfer this real estate into use; such use was later transformed into management; or
- e. decision to pay for management of the land, although the administrative body did not issue any decision to transfer the land into management.

Other legal persons, besides state legal persons and production and service cooperatives, are not eligible for the right resulting from Art. 2 point 2 of the Law of 29 Sept. 1990.

When a party cannot prove any of the above, it may prove the use of land as of 1 Aug. 1988, pursuant to Art. 80 point 2 of the Law of 29 Apr. 1985 on Land Administration and Expropriation of Real Estate (complete text: Journal of Laws of 1991, No. 30, Item 127). If said party held this land on or before 29 Apr. 1985, the party may request the right to administer this land or the right of perpetual usufruct.

Transfer of land to perpetual usufruct is based on administrative decision, not civil law contract. An obligation of first payment arises upon the issuance of this decision.

2. Determining the Right of Ownership of Buildings

Acquisition of ownership of buildings (including company apartments) which were previously held by state legal persons is free of charge if the buildings were constructed out of the legal persons' own resources. Budgetary subsidies and subsidies provided by Ministries are not recognized as an enterprise own resources, nor are funds designated for that purpose by the formerly existing State-enterprise associations. In principle, the presumption is that the company erected the buildings from its own resources. If the body issuing the decision is in doubt, a hearing is conducted. If the company had not financed construction of building out of its own resources, it is obligated to pay for it.

The form of payment depends on the enterprise's financial ability and can be as follows:

- a. cash,
- b. interest-bearing instalments,
- c. debt secured by mortgage (the State Treasury is creditor).

To prove holding of the building, the enterprise must present similar evidence as in the case of acquiring the right of perpetual usufruct of the land.

3. Problems in Deciding the Rights of Ownership of Land and Buildings

Based on the presented evidence, it is determined whether there is legal premise to transfer the land under perpetual usufruct and buildings into ownership of the privatized party. The evidence or lack of evidence works both ways, that is, its existence prohibits the enterprise from avoiding the acquisition of real property while lack of evidence makes acquisition impossible.

The decision of the body which certifies acquisition (or non acquisition) of ownership of the building may be sued in accordance with the provisions of the Code of Administrative Proceedings.

Lack of evidence of previous holding of the real estate in question precludes the company from including those assets as company assets. The precluded real estate must be excluded from valuation and other privatization procedures. As there is no other owner, the real estate is owned by the State Treasury. When it is determined that the company owns the real estate, the assets must be handled in accordance with the accepted privatization option.

In addition to purely procedural and administrative problems, which may occur upon certifying ownership of land and buildings, other problems related to reprivatization claims may arise. To date the Polish reprivatization policy has not been explicitly defined. Therefore it is unknown how reprivatization may complicate the privatization of apartments in some cases.

B. Privatization of Enterprise Apartments Through Liquidation

1. Status of Apartments Upon the Enterprise Liquidation

The process of disposition of enterprise assets through liquidation includes enterprise-owned apartments.³⁶ However, liquidation does not change the legal status of residential buildings, which remain company buildings. The burden of maintenance, previously that of the enterprise, is transferred to the new owner.

³⁶ Privatization of state enterprises through liquidation is regulated by provisions of Art. 37 - 43 of the Law on Privatization of State-Owned Enterprises of 13 July 1990 (Journal of Laws No. 51, Item 298; amended: Journal of Laws of 1991, No. 60, Item 253).

2. Requirement to Organize Tender for Sale of Enterprise Apartments

In the course of enterprise liquidation based on Art. 37 (privatization through liquidation) of the Law on Privatization of State Enterprises, a founding body must decide on enterprise housing when it makes the decision about the liquidation of the enterprise. In order to simplify procedures, the company being liquidated, could sell its housing. However, the Ordinance of Council of Ministers of 25 June 1990 requires that the sale be conducted through tender procedures for selling fixed assets of state enterprises (Journal of Laws No. 45, Item 260). Since housing assets are not listed in provisions specifying conditions when there are exemptions from tender procedures, their sale can take place only through tender.³⁷

C. Privatization of Enterprise Apartments Belonging to Companies Owned Solely by the State Treasury

The only difference is that there is no requirement of tender on the sale of apartments, thus making their privatization less difficult.

D. Inability to Privatize Enterprise Apartments Separately from Privatization of State-Owned Enterprises

The Law on privatization of state owned enterprises does not allow privatization through liquidation of enterprise houses separately from the privatization of the whole company.

Privatization of housing based on the existing Law on Privatization of State-Owned Enterprises only refers to company apartments as components of enterprise assets. Pursuant to Art. 4 point 2 and Art. 37, it is not possible to privatize housing units separately from the privatization of all other assets of the company.

Pursuant to Art. 37 of the Law on Privatization of State-Owned Enterprises, it is possible to privatize certain groups of assets (so called "organized assets") separately from the rest of the company. However, these exceptions do not apply to apartments, because they are not "organized assets" of the enterprise. In accordance with Art. 4 point 2, the term "organized asset" means "the set of tangible and intangible assets which constitute a separate enterprise and in particular a plant or shop or service outlet." Apartments do not meet this definition and thereby under the current law, cannot be privatized separately.

³⁷ See: Section I.C.4.(7) of this appendix.

Appendix 12A. Calculation of Rent

Rent calculation is based on an executive order of the Council of Ministers of 14 December 1987, "On the Calculation of Rent" (Journal of Laws, No. 40, Item 230 with later amendments, the latest of which were made on 1 May 1992, Journal of Laws, No. 36, Item 153).

The following example of rent calculation has been chosen for this presentation:

1. the apartment has 50 square meters of usable area (*see explanation below*);
2. the apartment is occupied by two persons;
3. it has three "living" rooms of 9, 12 and 16 square meters;
4. there is no direct natural light in the kitchen;
5. the apartment is equipped with a toilet, a bathroom and central heating.

The term "usable space (area)" means "total space of all areas within the apartment regardless of its purpose, i.e. rooms, kitchens, bathrooms, hallways, pantries, corridors, alcoves and other space used by the tenant for living and economic purposes. The following are not considered usable space: balconies, verandas, loggias, mezzanines, walk-in wardrobes and closets, laundry rooms, attics, cellars and rooms designated for fuel storage" (Journal of Laws, No. 40, Item 230, Paragraph 2, Section 2).

I. The base rate is 1,200 zlotys per 1 square meter of usable area.

In this example, the monthly rent is 60,000 zlotys which is equal to 50 square meters at 1,200 zlotys per square meter.

1. There are eight factors which determine whether a tenant is eligible for a reduction in the base rate (Journal of Laws, No. 40, Item 230, Paragraph 8, Section 1). These include:

1. 30% reduction for an apartment in a building which due to technical reasons is designated for demolition;
2. 30% reduction if not equipped with water supply and sewage system;
3. 30% reduction if located in a basement;
4. 30% reduction if higher than the fifth floor and the building is not equipped with an elevator;
5. 30% reduction if occupied by two or more principal tenants;
6. 20% reduction for no direct natural light in the kitchen;
7. 30% reduction for an apartment in a building located on the grounds of a state forest enterprise which is located more than three kilometers from a store or elementary school;
8. 50% reduction for an apartment in a building without electric power.

If more than one factor applies, only the factor providing the greatest reduction is used. For example, if an apartment is located in the basement (30% reduction) and there is no direct natural light in the kitchen (20% reduction), the tenant is only entitled to a 30% reduction.

There are four factors which determine whether a tenant is eligible for an increase in the base rate (Journal of Laws, No. 40, Item 230, Paragraph 8, Section 1). An increase in the base rate is not limited by the number of factors. These factors include:

1. 30% increase for a toilet;
2. 30% increase for a bathroom;
3. 30% increase for central heating;
4. 30% increase for the supply of natural gas.

In the example:	<u>Reduction/increase</u>	<u>Rent</u>
Base rate		60,000 zł
No direct natural light	20% reduction	(12,000) zł
Toilet	30% increase	18,000 zł
Bathroom	30% increase	18,000 zł
Central heating	30% increase	18,000 zł
Total increase		<u>42,000 zł</u>
Total rent		102,000 zł

2. Excessive space.

Room space³⁹ is added together until space is equal to or greater than the allowable per square meter space for the number of tenants in the flat (10 square meters per person). All remaining rooms of six square meters or larger are rented as excessive space. (Journal of Laws, No. 40, Item 230, Paragraph 9, Section 3).

In our example: total area of two rooms (9 square meters plus 12 square meters) equals 21 square meters and fulfils the space requirement. Therefore, 16 square meters are rented as excessive space. As another example, assume three rooms, 9 square meters, 10 square meters and 18 square meters. In this case, the 9 and 18 square meter rooms fulfil the allowable space requirement, and 10 square meters are rented as excessive space. Thus, even though both flats have the same number of square meters, it is "excessive rooms" above the allowable requirement which are rented at the excessive space rate.

The rent calculation for excessive space (in the original example, 50 square meters and 3 rooms 9, 12 and 16 square meters) is as follows:

102,000 zł divided by 50 m² = 2,040 zł per m².

Rate for excessive space = 200% of base rate.

Therefore excessive space rent =

$$16 \text{ m}^2 * 2,040 * 200\% = 65,280 \text{ zł.}$$

Total monthly rent for the apartment in this example = 102,000 + 65,280 = 167,280 zlotys.

³⁹ "Rooms" do not include kitchen, bathrooms or hallways.

3. Other factors increasing the base rate include the following:

- (a) If an occupant remains in the apartment after having lost legal title to occupy the flat, he is obligated to pay 200% of the total amount of monthly rent until he is removed from the unit;
- (b) If an occupant does not hold legal title to occupy the apartment, and never had legal title, he is obligated to pay 400% of the total amount of the monthly rent until he is removed from the unit. (Journal of Laws, No. 40, Item 230, Paragraph 10, Section 1).

II. The rent **does not** include fees for supplying the following:

- o power,
- o natural gas,
- o water,
- o heating,
- o other fees paid by the tenant, such as phone bills, radio & TV license.

The owner of the apartment is responsible for collecting the fee for water and heating and passing that amount on to the provider of the service.

Currently, part of these services are paid from the State budget. The Minister of Finance determines the maximum amount of fees for these services.

III. Apartments owned by enterprises

The base rate is determined in accordance with the same rules as described under sections I and II herein.

Appendix 12B. Transfer Fees and Expenses

Transfer of apartment ownership involves following charges:

1. Stamp Duty

This fee is regulated by the Ordinance of Minister of Finance of 26 June 1992 on Stamp Duty (Journal of Laws No. 53, Item 253) and amounts to 5% of apartment value subject to reservations provided for in Articles 58-63.

2. Fees for Notarial Procedures

These issues are regulated by the Ordinance of Minister of Justice dated 12 Apr. 1991 on notarial fees (Journal of Laws No. 33, Item 146). In accordance with provisions of § 2 point 1 of the Ordinance, the maximum amount of allowable fee is:

- a. if the value of the apartment is 100,000,000 zł, the cost of notarial services are 3% of the value;
- b. if the value of the apartment is between 100,000,000 to 200,000,000 zł, the cost of the notarial services are 3 million. zloty and 2% of the surplus over 100 million zloty;
- c. if the value of the apartment is between 200,000,000 and 500,000,000 zł, the cost of the notarial services is 5 million zloty and 1% of the surplus over 200 million zloty;
- d. if the value of the apartment is above 500,000,000, the cost of the notarial services is 8 million zloty and 0.5% of the surplus over 500 million zloty.

§ 2 point 2 of the above Ordinance defines the maximum notarial fee as 50,000,000 zlotys per service. *Charges are maximum and may be negotiated lower.*

3. Other Charges

According to § 1 of the Ordinance of the Minister of Justice of 13 Mar. 1991 on charges in civil cases (Journal of Laws No. 32, Item 135 amended: Journal of Laws No. 81, Item 358), a public notary may collect a charge for copies and extracts from notarial deeds of 5,000 zł per page.

4. Court Fees

Fees related to ownership registration in the land and mortgage register are regulated by the Ordinance of the Minister of Justice of 10 Sept. 1991 on registration fees in civil cases (Journal of Laws No. 85, Item 390). According to § 32 point 1 each application for registration of ownership and perpetual usufruct right is charged the equivalent of one-tenth of relative registration (i.e. 0.8% of real estate value). While the application for mortgage registration is charged the equivalent of one-fifth of relative registration (total 8%), i.e. 1.6% of mortgage value (§ 31 point 2 of said Ordinance).

Appendix 13. List of Relevant Laws.¹

(Załącznik 13. Wykaz podstawowych aktywów)

WYKAZ PODSTAWOWYCH AKTÓW PRAWNYCH WG STANU NA 30 STYCZNIA 1993

A) regulujących zakładową działalność socjalną:

- 1) Ustawa z dnia 24 października 1986 r. o zakładowych funduszach socjalnym i mieszkaniowym w jednostkach gospodarki społecznej (tekst jednolity Dz.U. z 1990 r., Nr 58 poz. 343, z 1991 r. Nr 80 poz. 350 i z 1992r. Nr 21 poz. 85),
- 2) Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 16 marca 1990 r. w sprawie ustalania odpisu podstawowego na zakładowy fundusz socjalny dla pracowników zatrudnionych w szczególnie uciążliwych warunkach pracy (Dz.U. Nr 19 poz. 118),
- 3) Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 21 grudnia 1990 r. w sprawie zasad ustalania przeciętnej miesięcznej liczby zatrudnionych w celu naliczania odpisów na zakładowe fundusze socjalny i mieszkaniowy w społecznych zakładach pracy (Dz.U. Nr 90 poz. 531),
- 4) Ustawa z dnia 3 lipca 1984 r. o kulturze fizycznej - art. 41 ust.1 - (Dz.U. Nr 34 poz. 181, z 1988 r. Nr 19 poz. 132 i Nr 41 poz. 324, z 1989 r. Nr 6 poz. 33, Nr 34 poz. 181 i Nr 35 poz. 192, z 1990 r. Nr 34 poz. 198),
- 5) Instrukcja Nr 14/KS Ministerstwa Finansów z dnia 31 grudnia 1986 r. w sprawie ewidencji księgowej niektórych operacji gospodarczych dotyczących zakładowego funduszu socjalnego (Dz.Urz. Min. Fin. Nr 12 poz. 41),
- 6) Ustawa z dnia 6 maja 1981 r. o pracowniczych ogrodach działkowych (Dz.U. z 1981 r. Nr 12 poz. 58, z 1985 r. Nr 12 poz. 50, Nr 35 poz. 162, z 1989 r. Nr 35 poz. 192), (przejście kompetencji Dz.U. z 1990 r. Nr 34 poz. 198 art 1 p.17),
- 7) Ustawa z dnia 26 stycznia 1982 r. - Karta Nauczyciela - art. 53 - (Dz.U. Nr 3 poz. 19, Nr 25 poz. 187 i Nr 31 poz. 214, z 1983 r. Nr 5 poz. 33, z 1988 r. Nr 19 poz. 132, z 1989 r. Nr 4 poz. 24 i Nr 35 poz. 192, z 1990 r. Nr 34 poz. 197, Nr 36 poz. 206, Nr 72 poz. 423 przejście kompetencji (art. 1 p.18) - Dz.U. Nr 31 poz. 198 z 1990 r. - rozciągnięcie niektórych przepisów na nauczycieli w szkołach kościelnych), zmiana 1991 r. Nr 95 poz. 425, Nr 104 poz. 450),

¹ Copied from, Teresa Elmerych, Jak przekształcić zakładową bazę socjalną w spółdzielnie, fundacje i spółki, Warsaw, 1991, updated by Teresa Elmerych March, 1993.

- 8) Ustawa z dnia 16 września 1982 r. - Prawo spółdzielcze - art 275 - (Dz.U. Nr 30 poz. 210, z 1983 r. Nr 39 poz. 176, z 1986 r. Nr 39 poz. 192, z 1987 r. Nr 33 poz. 181, z 1988 r. Nr 41 poz. 324, z 1989 r. Nr 3 poz. 12 i Nr 6 poz. 33, z 1990 r. Nr 6 poz. 36 i poz. 37, Nr 14 poz. 87, z 1991 r. - Nr 83 poz. 373, Nr 111 poz. 480, Nr 115 poz. 496 z 1992 r. Nr 21 poz. 85),
- 9) Ustawa z dnia 12 września 1990 r. o szkolnictwie wyższym - art. 122 - (Dz.U. Nr 65 poz. 385, z 1991 r. Nr 104 poz. 450),
- 10) Ustawa z dnia 23 maja 1991 r. o związkach zawodowych - art. 27 ust. 1 i 2 - (Dz.U. Nr 55 poz. 234 z 1991 r., Nr 55 poz. 234),
- 11) Rozporządzenie Rady Ministrów z dnia 7 lutego 1983 r. w sprawie wieku emerytalnego oraz wzrostu emerytur i rent inwalidzkich dla pracowników zatrudnionych w szczególnych warunkach lub w szczególnym charakterze - Wykaz A, stanowiący podstawę naliczania podwyższonego odpisu podstawowego na zakładowy fundusz socjalny - (Dz.U. Nr 8 poz. 43, z 1985 r. Nr 7 poz. 21, z 1991 r. Nr 39 poz. 167),

**B) regulujących działalność spółek prawa handlowego, fundacji,
spółdzielni i przedsiębiorstw państwowych:**

- 12) Rozporządzenie Prezydenta Rzeczypospolitej z dnia 27 czerwca 1934 r. - Kodeks handlowy (Dz.U. Nr 57 poz. 502, z 1946 r. Nr 57 poz. 321, z 1950 r. Nr 34 poz. 312, z 1964 r. Nr 16 poz. 94, z 1988 r. Nr 41 poz. 326, z 1990 r. Nr 17 poz. 98 i Nr 52 poz. 298, z 1991 r. Nr 35 poz. 155, Nr 94 poz. 418 i Nr 111 poz. 480),
- 13) Rozporządzenie Prezydenta Rzeczypospolitej z dnia 24 października 1934 r. - Prawo upadłościowe (Dz.U. Nr 93 poz. 832, z 1935 r. Nr 22 poz. 129, z 1946 r. Nr 31 poz. 197 i Nr 60 poz. 329, z 1949 r. Nr 32 poz. 240, z 1950 r. Nr 38 poz. 349, z 1990 r. Nr 14 poz. 87 i Nr 55 poz. 320),
- 14) Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (Dz.U. Nr 16 poz. 94, z 1971 r. Nr 27 poz. 252, z 1976 r. Nr 19 poz. 122, z 1982 r. Nr 11 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, z 1990 r. Nr 34 poz. 198, Nr 55 poz. 321, Nr 79 poz. 464, z 1991 r. Nr 107 poz. 464, Nr 115 poz. 496),
- 15) Ustawa z dnia 23 kwietnia 1964 r. Przepisy wprowadzające Kodeks cywilny (Dz.U. Nr 16 poz. 94, z 1974 r. Nr 24 poz. 142, z 1982 r. Nr 19 poz. 147, z 1990 r. Nr 55 poz. 321),
- 16) Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego (Dz.U. Nr 43 poz. 296, z 1965 r. Nr 15 poz. 113, z 1974 r. Nr 27 poz. 157, Nr 39 poz. 231, z 1975 r. Nr 45 poz. 234, z 1982 r. Nr 11 poz. 82, Nr 30 poz. 210, z 1983 r. Nr 5 poz. 33, z 1984 r. Nr 45 poz. 241 i poz. 242 z 1985 r. Nr 20 poz. 86, z 1987 r. Nr 21 poz. 123, z 1988 r. Nr 41 poz. 324 z 1989 r. Nr 4 poz. 21, Nr 33 poz. 175, z 1990 r. Nr 14 poz. 88, Nr 34 poz. 198, Nr 53 poz. 306, Nr 55 poz. 318, Nr 79 poz. 464,

- z 1991 r. Nr 7 poz. 24, Nr 22 poz. 92, Nr 115 poz. 496, z 1993 r. Nr 12 poz. 130),
- 17) Ustawa z dnia 17 listopada 1964 r. Przepisy wprowadzające Kodeks postępowania cywilnego (Dz.U. Nr 43 poz. 297, z 1985 r. Nr 20 poz. 86, z 1990 r. Nr 55 poz. 318),
 - 18) Ustawa z dnia 10 kwietnia 1974 r. Prawo lokalowe (Dz.U. 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, z 1990 r. Nr 4 poz. 19, Nr 32 poz. 190, Nr 34 poz. 198, z 1991 r. Nr 115 poz. 496),
 - 19) Ustawa z dnia 25 września 1981 r. o przedsiębiorstwach państwowych (Dz.U. z 1991 r. Nr 18 poz. 80 i Nr 75 poz. 329, Nr 101 poz. 444, Nr 107 poz. 464),
 - 20) Ustawa z dnia 25 września 1981 r. o samorządzie załogi przedsiębiorstwa państwowego (Dz.U. Nr 24 poz. 123, z 1989 r. Nr 17 poz. 88, z 1987 r. Nr 33 poz. 181, z 1989 r. Nr 10 poz. 57, z 1990 r. Nr 17 poz. 99, z 1991 r. Nr 2 poz. 6),
 - 21) Ustawa z dnia 6 kwietnia 1984 r. o fundacjach (Dz.U. z 1991 r. Nr 46 poz. 203),
 - 22) Ustawa z dnia 29 kwietnia 1985 r. o gospodarce gruntami i wywłaszczaniu nieruchomości (Dz.U. z 1991 r. Nr 30 poz. 127, Nr 83 poz. 373, Nr 103 poz. 446, Nr 107 poz. 464, z 1992 r. Nr 91 poz. 455),
 - 23) Ustawa z dnia 23 grudnia 1988 r. o działalności gospodarczej (Dz.U. Nr 41 poz. 324, z 1990 r. Nr 26 poz. 149 i Nr 86 poz. 504, z 1991 r. Nr 31 poz. 128, Nr 41 poz. 179, Nr 73 poz. 321, Nr 105 poz. 452, Nr 106 poz. 457, Nr 107 poz. 460),
 - 24) Ustawa z dnia 31 stycznia 1989 r. o gospodarce finansowej przedsiębiorstw państwowych (tekst jednolity z 1992 r. Nr 6 poz. 27),
 - 25) Ustawa z dnia 31 stycznia 1989 r. - Prawo bankowe (Dz.U. z 1992 r. Nr 72 poz. 359, z 1993 r. Nr 6 poz. 29),
 - 26) Ustawa z dnia 15 lutego 1989 r. - Prawo dewizowe (Dz.U. Nr 6 poz. 33 i Nr 74 poz. 441 z 1991 r. Nr 60 poz. 253 i Nr 73 poz. 320, Nr 100 poz. 442),
 - 27) Ustawa z dnia 28 grudnia 1989 r. - Prawo celne (Dz.U. Nr 75 poz. 445, z 1991 r. Nr 60 poz. 253, Nr 73 poz. 320, Nr 100 poz. 442, z 1992 r. Nr 21 poz. 85),
 - 28) Ustawa z dnia 16 października 1991 r. o zatrudnieniu i bezrobociu (Dz.U. Nr 106 poz. 457, z 1992 r. Nr 21 poz. 84),
 - 29) Ustawa z dnia 29 grudnia 1989 r. o szczególnych zasadach rozwiązywania z pracownikami stosunków pracy z przyczyn dotyczących zakładu pracy oraz o zmianie niektórych ustaw (Dz.U. Nr 4 poz. 19, Nr 10 poz. 59 i Nr 51 poz. 298, z 1991 r. Nr 83 poz. 372, Nr 106 poz. 457, Nr 113 poz. 491, z 1992 r. Nr 21 poz. 84),

- 30) Ustawa z dnia 24 lutego 1990 r. o przeciwdziałaniu praktykom monopolistycznym (tekst jednolity Dz.U. z 1991 r. Nr 89 poz. 403),
- 31) Ustawa z dnia 8 marca 1990 r. o samorządzie terytorialnym (Dz.U. Nr 16 poz. 95, Nr 32 poz. 191, Nr 34 poz. 199, Nr 43 poz. 253, Nr 89 poz. 518, z 1991 r. Nr 4 poz. 18, Nr 110 poz. 473),
- 32) Ustawa z dnia 10 maja 1990 r. Przepisy wprowadzające ustawę o samorządzie terytorialnym i ustawę o pracownikach samorządowych (Dz.U. Nr 32 poz. 191, Nr 43 poz. 253, Nr 92 poz. 541, z 1991 r. Nr 34 poz. 151, z 1992 r. Nr 6 poz. 20),
- 33) Ustawa z dnia 13 lipca 1990 r. o prywatyzacji przedsiębiorstw państwowych (Dz.U. Nr 51 poz. 298 i Nr 85 poz. 498 z 1991 r., Nr 60 poz. 253 i Nr 11 poz. 480),
- 34) Ustawa z dnia 13 lipca 1990 r. o utworzeniu urzędu Ministra Przekształceń Własnościowych (Dz.U. Nr 51 poz. 299),
- 35) Ustawa z dnia 14 lutego 1991 r. Prawo o notariacie (Dz.U. Nr 22 poz. 91),
- 36) Ustawa budżetowa na 1991 r. z dnia 23 lutego 1991 r. (Dz.U. Nr 21 poz. 89 i Nr 34 poz. 150; w art. 14 ust. 1 - dotacje budżetowe dla spółdzielni mieszkaniowych; w art. 19 ust. 1 - wykupienie ze środków budżetowych państwa części należności banków z tytułu skapitalizowania odsetek od kredytów mieszkaniowych),
- 37) Ustawa z dnia 14 czerwca 1991 r. o spółkach z udziałem zagranicznym (Dz.U. Nr 60 poz. 253 z 1991 r. Nr 80, poz. 350, Nr 111 poz. 480),
- 38) Rozporządzenie Ministra Finansów z dnia 27 marca 1992 r. w sprawie składników majątkowych uznanych za środki trwałe oraz wartości niematerialne i prawne, zasady i stawki ich amortyzacji oraz trybu i terminów aktualizacji i wyceny środków trwałych (Dz.U. Nr 30 poz. 130, Nr 130 poz. 524),
- 39) Rozporządzenie Rady Ministrów z dnia 30 listopada 1981 r. w sprawie wykonywania ustawy o przedsiębiorstwach państwowych (Dz.U. Nr 31 poz. 170, z 1987 r. Nr 37 poz. 213, z 1988 r. Nr 6 poz. 51 i Nr 12 poz. 95, z 1989 r. Nr 6 poz. 42),
- 40) Rozporządzenie Rady Ministrów z dnia 25 czerwca 1990 r. w sprawie zasad organizowania przetargu na zbycie środków trwałych przez przedsiębiorstwa państwowe oraz warunki odstąpienia od przetargu (Dz.U. Nr 45 poz. 260),
- 41) Rozporządzenie Rady Ministrów z dnia 11 lipca 1990 r. w sprawie warunków, jakim powinno odpowiadać zgłoszenie zamiaru łączenia, przekształcenia lub utworzenia podmiotów gospodarczych (Dz.U. Nr 46 poz. 271),
- 42) Rozporządzenie Rady Ministrów z dnia 29 października 1991 r. w sprawie określenia przedsiębiorstw państwowych o szczególnym znaczeniu dla gospodarki państwa, których prywatyzacja wymaga zgody Rady Ministrów (Dz.U. z 1991 r. Nr 99, poz. 441),

- 43) Rozporządzenie Rady Ministrów z dnia 1 grudnia 1990 r. w sprawie form zapłaty za akcje nabywane od Skarbu Państwa (Dz.U. Nr 84 poz. 493),
- 44) Rozporządzenie Rady Ministrów z dnia 26 czerwca 1991 r. w sprawie szczególnego trybu podziału przedsiębiorstw państwowych podlegających komunalizacji (Dz.U. Nr 58 poz. 248),
- 45) Rozporządzenie Rady Ministrów z dnia 16 lipca 1991 r. w sprawie wykonania niektórych przepisów ustawy o gospodarce gruntami i wywłaszczaniu nieruchomości (Dz.U. Nr 72 poz. 311),
- 46) Rozporządzenie Ministra Sprawiedliwości z dnia 13 kwietnia 1984 r. w sprawie prowadzenia rejestru fundacji (Dz.U. Nr 27 poz. 139 i z 1991 r. Nr 64 poz. 278),
- 47) Rozporządzenie Ministra Współpracy Gospodarczej z Zagranicą z dnia 31 grudnia 1989 r. w sprawie sposobu rozdysponowania kontyngentów oraz postępowania w sprawach dotyczących pozwoleń na wywóz i przywóz w obrocie towarowym z zagranicą (Dz.U. z 1990 r. Nr 1 poz. 8 i Nr 60 poz. 352, z 1992 r. Nr 1 poz. 2),
- 48) Rozporządzenie Ministra Przekształceń Własnościowych z dnia 20 listopada 1990 r. w sprawie sposobu przeprowadzania analiz prawnych i ekonomiczno-finansowych przedsiębiorstwa spółki, ich finansowania oraz kwalifikacji wymaganych od osób dokonujących analiz (Dz.U. z 1991 r. Nr 2 poz. 10),
- 49) Rozporządzenie Ministra Przekształceń Własnościowych z dnia 20 listopada 1990 r. w sprawie zasad finansowania udostępniania akcji Skarbu Państwa w spółkach powstałych w wyniku przekształceń przedsiębiorstw państwowych (Dz.U. z 1991 r. Nr 2 poz. 11),
- 50) Rozporządzenie Ministra Finansów z dnia 15 stycznia 1991 r. w sprawie zasad prowadzenia rachunkowości (Dz.U. Nr 10 poz. 35, z 1991 r. Nr 124 poz. 554),
- 51) Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 23 lutego 1991 r. w sprawie podstawowych kierunków prywatyzacji w 1991 r. (Monitor Polski Nr 13 poz. 86).
- 52) Uchwała Nr 189 Rady Ministrów z dnia 30 listopada 1990 r. w sprawie określenia rodzajów przedsiębiorstw, których akcje mogą nabywać producenci rolni na warunkach preferencyjnych (Monitor Polski Nr 46 poz. 353),
- 53) Zarządzenie Prezesa Narodowego Banku Polskiego z dnia 11 sierpnia 1989 r. w sprawie ogólnych warunków otwierania i prowadzenia rachunków bankowych w celu przechowywania środków pieniężnych i przeprowadzania rozliczeń oraz uchylecia obowiązków dotyczących prowadzenia rachunków podstawowego i pomocniczego (Monitor Polski Nr 27 poz. 218),
- 54) Zarządzenie Prezesa Narodowego Banku Polskiego z dnia 11 sierpnia 1989 r. w sprawie form i trybu przeprowadzania za pośrednictwem banków rozliczeń pieniężnych między osobami prawnymi oraz między tymi osobami i innymi

- podmiotami (Monitor Polski Nr 27 poz. 219, Nr 38 poz. 303 i 1991 r. Nr 25 poz. 174, z 1989 r., Nr 38 poz. 302 i z 1991 r. Nr 25 poz. 174),
- 55) Zarządzenie Ministra Finansów z dnia 31 grudnia 1989 r. w sprawie ogólnego zezwolenia dewizowego (Monitor Polski z 1990 r. Nr 1 poz. 3 i Nr 5 poz. 30),
 - 56) Zarządzenie Ministra Finansów z dnia 10 listopada 1990 r. w sprawie zasad ustalania należności za korzystanie z mienia Skarbu Państwa (Monitor Polski Nr 43 poz. 334 i z 1991 r. Nr 18 poz. 123),
 - 57) Zarządzenie Ministra Gospodarki Przestrzennej i Budownictwa z dnia 19 czerwca 1991 r. w sprawie przetargów na nieruchomości stanowiące własność Skarbu Państwa lub własność gminy (Monitor Polski Nr 21 poz. 148),
 - 58) Zarządzenie Ministra Sprawiedliwości z dnia 6 lipca 1991 r. w sprawie ramowego zakresu sprawozdań składanych przez fundacje (Monitor Polski Nr 23 poz. 156),
 - 59) Obwieszczenie Prezesa Głównego Urzędu Statystycznego z dnia 7 lutego 1991 r. w sprawie wykazu obowiązków sprawozdawczych ustalonych przez Główny Urząd Statystyczny (Monitor Polski Nr 12 poz. 81, Nr 15 poz. 103 i Nr 21 poz. 152, MP z 1991 r. Nr 33 poz. 247 z 1992 r. Nr 7 poz. 50),
 - 60) Zarządzenie Nr 74 Prezesa Głównego Urzędu Statystycznego z dnia 3 listopada 1989 r. (znak: SI-5R-74/89) w sprawie podstawowego kodu oznaczania statystycznego numerami identyfikacyjnymi (Dz.Urz. GUS Nr 31 poz. 73),

C) regulujących podatki, opłaty i składki ustawowe:

- 61) Ustawa z dnia 16 grudnia 1972 r. o podatku obrotowym (Dz.U. z 1983 r. Nr 43 poz. 191, z 1985 r. Nr 12 poz. 50, z 1989 r. Nr 3 poz. 12, Nr 74 poz. 443, z 1991 r. Nr 9 poz. 30, Nr 35 poz. 155, z 1992 r. Nr 21 poz. 86, Nr 68 poz. 341),
- 62) Ustawa z dnia 19 grudnia 1980 r. o zobowiązaniach podatkowych (Dz.U. Nr 27 poz. 111, z 1982 r. Nr 45 poz. 289, z 1984 r. Nr 52 poz. 268, z 1985 r. Nr 12 poz. 50, z 1988 r. Nr 41 poz. 325, z 1989 r. Nr 4 poz. 23, Nr 33 poz. 176, Nr 35 poz. 192 i Nr 74 poz. 443, z 1990 r. Nr 34 poz. 198, Nr 40 poz. 233, z 1991 r. Nr 100 poz. 442, Nr 110 poz. 475, z 1992 r. Nr 21 poz. 86),
- 63) Ustawa z dnia 26 lutego 1982 r. o opodatkowaniu jednostek gospodarki uspołecznionej (Dz.U. z 1987 Nr 12 poz. 77, z 1989 r. Nr 3 poz. 12, Nr 35 poz. 192, Nr 74 poz. 443, z 1990 r. Nr 21 poz. 126, z 1991 r. Nr 9 poz. 30, Nr 80 poz. 350, Nr 123 poz. 547, z 1992 r. Nr 21 poz. 86, Nr 68 poz. 341),
- 64) Ustawa z dnia 28 lipca 1983 r. o podatku od spadków i darowizn (Dz.U. Nr 45 poz. 207, z 1989 r. Nr 74 poz. 443),
- 65) Ustawa z dnia 15 listopada 1984 r. o podatku rolnym (Dz.U. Nr 52 poz. 268, z 1986 r. Nr 46 poz. 225, z 1988 r. Nr 1 poz. 1, z 1989 r. Nr 7 poz. 45, Nr 10 poz. 53, Nr

- 35 poz. 192, Nr 74 poz. 443, z 1990 r. Nr 34 poz. 198, z 1991 r. Nr 7 poz. 24, Nr 80 poz. 350, Nr. 114 poz. 494, z 1992 r. Nr 21 poz. 86),
- 66) Ustawa z dnia 3 stycznia 1989 r. o opłacie skarbowej (Dz.U. Nr 4 poz. 23, Nr 74 poz. 443, z 1992 r. Nr 21 poz. 86),
 - 67) Ustawa z 15 lutego 1992 r. o podatku dochodowym od osób prawnych oraz o zmianie niektórych ustaw regulujących zasady opodatkowania (Dz.U. z 1992 r. Nr 21 poz. 86, Nr 40 poz. 174, Nr 68 poz. 341, Nr 100 poz. 498, z 1993 r. Nr 11 poz. 50),
 - 68) Ustawa z dnia 21 czerwca 1990 r. o zwrocie korzyści uzyskanych niesłusznie kosztem Skarbu Państwa lub innych państwowych osób prawnych (Dz.U. Nr 44 poz. 255),
 - 69) Ustawa z dnia 29 grudnia 1990 r. o opodatkowaniu wzrostu wynagrodzeń (Dz.U. z 1991 r. Nr 1 poz. 1, z 1992 r. Nr 21 poz. 85, Nr 75 poz. 361),
 - 70) Ustawa z dnia 12 stycznia 1991 r. o podatkach i opłatach lokalnych (Dz.U. Nr 9 poz. 31, Nr 101 poz. 404, z 1992 r. Nr 21 poz. 86),
 - 71) Ustawa z dnia 26 lipca 1991 r. o podatku dochodowym od osób fizycznych (Dz.U. Nr 80 poz. 350, z 1991 r. Nr 100 poz. 442, z 1992 r. Nr 21 poz. 86, Nr 68 poz. 341 i Nr 100 poz. 498, z 1993 r. Nr 11 poz. 50),
 - 72) Rozporządzenie Rady Ministrów z dnia 9 listopada 1987 r., w sprawie kaucji zabezpieczającej pokrycie należności wynajmującego z tytułu najmu lokalu (Dz.U. Nr 36 poz. 206),
 - 73) Rozporządzenie Rady Ministrów z dnia 29 stycznia 1990 r. w sprawie obowiązkowej składki zakładów pracy na Fundusz Pracy (Dz.U. Nr 5 poz. 29),
 - 74) Rozporządzenie Rady Ministrów z dnia 29 lipca 1990 r. w sprawie wysokości do ubezpieczenia społecznego oraz rozliczania składek i świadczeń z ubezpieczenia społecznego (Dz.U. Nr 7 poz. 41, Nr 41 poz. 238, Nr 71 poz. 418, z 1991 r. Nr 12 poz. 49 i Nr 28 poz. 120, Nr 69 poz. 295, z 1992 r. Nr 18 poz. 76),
 - 75) Rozporządzenie Ministra Finansów z dnia 26 czerwca 1992 r. w sprawie opłaty skarbowej (Dz.U. Nr 53 poz. 253),
 - 76) Rozporządzenie Ministra Sprawiedliwości z dnia 23 października 1989 r. w sprawie opłat za dokonanie czynności notarialnych (Dz.U. Nr 60 poz. 358, z 1990 r. Nr 46 poz. 273, Nr 64 poz. 377, z 1991 r. Nr 22 poz. 94, z 1992 r. Nr 24 poz. 105),
 - 77) Rozporządzenie Ministra Finansów z dnia 31 grudnia 1989 r. w sprawie wykonania niektórych przepisów ustawy o zobowiązaniach podatkowych (Dz.U. z 1990 r. Nr 1 poz. 4, Nr 50 poz. 295, z 1991 r. Nr 124 poz. 550),
 - 78) Rozporządzenie Ministra Finansów z dnia 22 marca 1991 r. w sprawie wykonania niektórych przepisów ustawy o podatku od spadków i darowizn (Dz.U. Nr 26 poz.

- 108, z 1991 r. Nr 82 poz. 368),
- 79) Rozporządzenie Ministra Sprawiedliwości z dnia 12 kwietnia 1991 r. w sprawie taksy notarialnej (Dz.U. Nr 33 poz. 146, z 1992 r. Nr 21 poz. 89),
- 80) Rozporządzenie Ministra Finansów z dnia 17 kwietnia 1991 r. w sprawie stawek podatku obrotowego od jednostek gospodarki uspołecznionej oraz ulg i zwolnień od tego podatku (Dz.U. Nr 38 poz. 166, Nr 68 poz. 292, Nr 123 poz. 547, z 1992 r. Nr 9 poz. 34 i Nr 32 poz. 142),
- 81) Ustawa z dnia 8 stycznia 1993 r. o podatku od towarów i usług oraz o podatku akcyzowym (Dz.U. Nr 11 poz. 50).

D) regulujących zakładową działalność bytową:

w zakresie żywienia przyzakładowego:

- 82) Uchwała nr 295 Rady Ministrów z dnia 23 grudnia 1971 r. w sprawie zasad odpłatności konsumentów za korzystanie z żywienia przyzakładowego oraz pokrywania kosztów tego żywienia (Monitor Polski z 1982 r. Nr 13; poz. 98, z 1984 r. Nr 25, poz. 168; z 1990 r. Nr 11, poz. 83);
- 83) Zarządzenie Ministra Handlu Wewnętrznego i Usług z dnia 31 stycznia 1984 r. w sprawie zasad organizacji żywienia przyzakładowego oraz zasad rozliczeń między stronami z tytułu świadczeń usług żywienia przyzakładowego (Monitor Polski Nr 4, poz. 38; z 1988 r. Nr 17, poz. 142);
- 84) Uchwała Nr 134 Rady Ministrów z dnia 8 października 1984 r. w sprawie zasad wydawania posiłków profilaktycznych i regeneracyjnych wzmacniających pracowników zatrudnionych w warunkach szkodliwych dla zdrowia lub szczególnie uciążliwych (Monitor Polski Nr 25, poz. 168);
- 85) Zarządzenie Ministra Zdrowia i Opieki Społecznej z dnia 4 lipca 1985 r. w sprawie szczegółowych warunków, jakim powinny odpowiadać posiłki profilaktyczne i regeneracyjne wzmacniające pod względem składu i wartości odżywczej, oraz warunków higieniczno-sanitarnych wydawania tych posiłków (Monitor Polski Nr 23, poz. 179);

w zakresie szkolnictwa przyzakładowego:

- 86) Ustawa z dnia 7 września 1991 r. o systemie oświaty (Dz.U. Nr 95, poz. 425 i z 1992 r. Nr 26, poz. 113);
- 87) Rozporządzenie Rady Ministrów z dnia 12 października 1989 r. w sprawie przygotowania zawodowego modocianych w uspołecznionych zakładach pracy i ich wynagradzania (Dz.U. Nr 56, poz. 332; z 1990 r. Nr 60, poz. 346);
- 88) Rozporządzenie Rady Ministrów z dnia 19 sierpnia 1985 r. w sprawie prowadzenia

i utrzymywania szkół oraz innych placówek poza systemem rad narodowych (Dz.U. Nr 43, poz. 206 i z 1990 r. Nr 4, poz. 23);

- 89) Rozporządzenie Rady Ministrów z dnia 16 września 1985 r. w sprawie zasad organizowania i finansowania praktycznej nauki zawodu (Dz.U. Nr 52, poz. 268; z 1988 r. Nr 29, poz. 201; z 1990 r. Nr 57, poz. 337);
- 90) Rozporządzenie Rady Ministrów z dnia 18 września 1992 r. w sprawie szczegółowych zasad ustalania wysokości i udzielania dotacji na działalność dydaktyczną i opiekuńczo-wychowawczą przedszkoli oraz szkół publicznych prowadzonych przez osoby prawne i fizyczne (Dz.U. Nr 71, poz. 354);

w zakresie lecznictwa przyzakładowego:

- 91) Ustawa z dnia 30 sierpnia 1991 r. o zakładach opieki zdrowotnej - art. 8 (Dz.U. Nr 91, poz. 408; z 1992 r. Nr 63, poz. 315);
- 92) Rozporządzenie Ministra Zdrowia i Opieki Społecznej z dnia 19 maja 1982 r. w sprawie organizacji i zadań zakładów opieki zdrowotnej (Dz.U. Nr 15, poz. 121; z 1984 r. Nr 60, poz. 312; z 1989 r. Nr 28, poz. 152);
- 93) Ustawa z dnia 17 czerwca 1966 r. o uzdrowiskach i lecznictwie uzdrowiskowym (Dz.U. Nr 23, poz. 150);
- 94) Uchwała Nr 251 Rady Ministrów z dnia 26 października 1967 r. w sprawie zasad działania organów i instytucji uprawnionych do prowadzenia zakładów i urzędzeń lecznictwa uzdrowiskowego (Monitor Polski Nr 62, poz. 295);
- 95) Zarządzenie Ministra Zdrowia i Opieki Społecznej z dnia 21 sierpnia 1967 r. w sprawie typowych rodzajów zakładów i urzędzeń lecznictwa uzdrowiskowego (Monitor Polski Nr 55, poz. 272);
- 96) Rozporządzenie Ministra Zdrowia i Opieki Społecznej z dnia 21 września 1992 r. w sprawie wymagań, jakim powinny odpowiadać pod względem fachowym i sanitarnym pomieszczenia i urządzenia zakładu opieki zdrowotnej (Dz.U. Nr 74, poz. 366);

w zakresie zbiorowego zakwaterowania:

- 97) Rozporządzenie Ministra Pracy i Polityki Socjalnej z dnia 20 lipca 1988 r. w sprawie zasad zajmowania i opróżniania lokali położonych w hotelach pracowniczych, ustalania opłat za zakwaterowanie oraz ramowych zasad ustalania kategorii hoteli pracowniczych (Dz.U. Nr 30, poz. 211; z 1989 r. Nr 49, poz. 281; z 1990 r. Nr 19, poz. 117);
- 98) Rozporządzenie Ministra Gospodarki Terenowej Ochrony Środowiska oraz Przewodniczącego Głównego Komitetu Kultury Fizycznej i Turystyki z dnia 26 lipca 1973 r. w sprawie wymagań higieniczno-sanitarnych dla hoteli i innych zakładów noclegowych (Dz.U. Nr 33, poz. 196);

- 99) Zarządzenie Przewodniczącego Głównego Komitetu Turystyki z dnia 24 czerwca 1985 r. w sprawie rodzajów i kategorii zakładów hotelarskich, obozowisk i domków turystycznych (Monitor Polski Nr 25, poz. 193);
- 100) Ustawa z dnia 21 kwietnia 1988 r. o Funduszu Wczasów Pracowniczych (Dz.U. Nr 11, poz. 84; z 1992 r. Nr 21, poz. 85, art. 4);

Appendix 14. Government Proposals for Housing

The Government of Poland, realizing the importance of its housing policy, has started some legal reforms in this field. Thus far, the efforts are largely preliminary.

Reflecting a sense of general dissatisfaction among citizens over the state of housing in Poland, for the last two years the press has engaged in intense public discussion on the situation in this area, pointing out numerous problems which will have to be resolved. There exists a need to update and revise the legal framework for transfer and ownership of housing. The unresolved problems of financing private property ownership are of particular importance if Poland is to overcome the housing shortages and enable its citizens to become property owners. The current legal framework reflect the priorities of the former government, which are not suited for the present political and economic order. The old policies attempted to discourage private ownership and to halt private investment; they promoted inefficient and economically infeasible system of social welfare. The old laws clash with the present realities.

Thus far, the government has not come up with a comprehensive housing policy. Some attempts have been made to introduce reforms aimed at improving the legal regulation of housing. Most of these attempts, however, have turned out to be less comprehensive than needed and were not preceded by a coherent government policy, which could have integrated the housing reforms into the general free market reforms introduced in Poland in the last two years. As a result, fragmentary free market solutions introduced in the field of construction, for instance, were not followed by such reforms in the field of maintenance and operation of housing, where state-controlled, low rents and lack of effective eviction regulations are prevalent.

To improve the situation, several projects are being developed by multi-lateral agencies such as the World Bank as well as the Ministry of Construction. These projects are still in preliminary stages and will take months of legislative deliberations and bureaucratic reviews to reach the implementation stage.

One World Bank project which was signed by the Government at the end of December 1992, is the housing finance project which creates a Mortgage Fund, to which both the World Bank and the Polish government will make equal contributions (\$200 million each). This Fund will provide credit to Polish banks, which in turn will grant loans to individual apartment purchasers. The amount of the loan depends on the income earned by the household. As of the beginning of 1993, the loan amount cannot exceed 36 times monthly income. The loan can only be granted to persons who earn more than the average national income, and capital and interest payments cannot be less than 25% of monthly household income. Loans are currently available through bank PKO BP.

Among government projects, the most promising is the project on New Housing Order of the Ministry of Construction, which is in the drafting stages at present. Should the Ministry's proposals become law, they will resolve many of the problems faced by companies attempting to privatize their housing. The project addresses such issues as making credits available for purchase and construction of housing, providing housing subsidies based on

need, liberalizing the rent controls of the government, allowing enterprises to transfer their employee housing to gminas, and regulating the real estate ownership structure.

In particular the project proposes six laws which will enable the government to implement its new housing policies.

1. Law on Regulating the Ownership and Maintenance of Apartments.

The law aims to establish clear guidelines on management and maintenance of common areas in apartment complexes. It will also attempt to streamline the principles of apartment ownership in Poland in order to make them uniform. Certain changes in the Civil Code, Cooperative Law, and Labor Law will have to be introduced.

2. Law on Use and Exchange of Apartments.

This law will regulate the duties and obligations of owners and tenants of apartments. To assure adequate tenant protection, the principle of governmental control over rent levels will be maintained, but the maximum amounts will be increased. The draft law also proposes to repeal the current Housing Law.

3. Law on Government Housing Assistance Programs

Recognizing the fact that some level of social assistance will be necessary, the Ministry will establish the procedures for granting housing subsidies.

4. Law on Promotion of Private Housing.

Two governmental bodies, the State Housing Agency and the National Housing Fund, will be created to formulate and implement the principles of Poland's housing policy. The law will also set forth the guidelines on the local and State government's involvement in creation of credit and tax incentives for construction of housing.

5. Law on Providing Credit for Housing Through Savings and Loan Banks.

The Project proposes an elaborate system of providing long-term credits for housing. The citizens will deposit their money in special banks for a pre-determined period of time, at an interest rate considerably below the prevailing market rate. In exchange, they will receive a contractual guarantee of receiving housing credit below the market rate. The amount of credit will depend on the size and duration of deposit, and it will be secured by real property purchased.

6. Law on Transfer of Enterprise Housing to Gminas.

The goal is to enable, as soon as possible, the separation of enterprise housing from the productive assets of companies. The Project proposes to give enterprises the option of transferring such housing to the Gminas, within six months after the Law comes into effect. However, while this law will allow the enterprises to dispose of their housing problems, it does not solve the problem, only transfers it. Many Gminas already have significant housing

problems of their own and lack the funds to address those problems. Adding additional housing responsibilities to the Gminas could simply exacerbate the problem. However, the other programs to encourage private ownership, provide credits and alleviate the burdens of rent control on the enterprise, should go far in helping to resolve the housing crisis in Poland.

Status: Currently, the solutions offered by the Ministry of Construction are far from final and will undergo many changes over the coming year. Many of the Ministry proposals are only in the drafting stage, some are partially drafted while others are going through interdepartmental consultations. As of 1 November 1992, the draft laws were only projects of the Ministry of Construction. The legislative process in Poland requires that the ministerial projects are consulted and approved by other ministries before they can be approved by the Council of Ministers. The process of consultations can be long drawn and cumbersome; it will take at least two to three months, provided the other ministries have no serious objections. The next step would be to present the project to the Legislative Council of the Council of Ministers, and hope for its approval. Only after it is approved would the ministerial project become a government project. The draft law would then be forwarded to the Parliament for the final stage of the legislative process.

Even with the full support of the government, the parliamentary process will still take several months and much longer if there are any controversial issues involved, a likely complication in this case. Even under the most favorable of circumstances, a new legal framework for housing in Poland will probably not take effect until the fall or winter of 1993.

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