

**SUPPORT FOR ECONOMIC GROWTH AND INSTITUTIONAL REFORM (SEGIR) AREA (4),
GENERAL BUSINESS DEVELOPMENT AND TRADE AND INVESTMENT (GBTI)**

QUARTERLY PERFORMANCE REPORT

Contract No.:	PCE-I-00-98-00016-00
Contractor's Name:	The Nathan-MSI Group
Period Covered:	October - December 2003

Current Quarter Activities

Task Order 821. Indonesia Economic Law, Institutional and Professional Strengthening (ELIPS II) Activity, 8/15/01-12/31/04

ELIPS II seeks to improve economic laws and regulations and strengthen legal institutions and professional associations in order to foster a transparent and sound legal and regulatory environment enforced by the commercial court system and regulatory commissions. The intent is to reduce business uncertainty, lower hidden costs of doing business, and increase investment. ELIPS II is working to strengthen and assist regulatory commissions, the Ministry of Justice, law schools, and professional associations. It is also providing technical assistance in drafting, promoting, passing, understanding and implementing laws, decrees, administrative orders, and decisions.

ELIPS II began work in 2001 only days after the September 11 attacks on the United States and just before the launch of Operation Enduring Freedom in early October. Tensions were high in Indonesia in the run up to the war in Afghanistan and it was difficult for ELIPS advisors to travel anywhere in Indonesia including in and around Jakarta. Even after tensions eased, it was not until early 2002 that ELIPS was again authorized to bring in short-term advisors. Then on October 12, 2002, two bombs went off in a crowded area on Bali killing more than 200 people, mostly foreign tourists. As a result, two of the five resident ELIPS advisors were evacuated to Washington, D.C., where they worked out of (subcontractor) Checchi and Company Consulting's home offices (except for brief periods of authorized travel) until mid-April 2003, when the evacuation order was lifted and all advisors returned to Indonesia. The Jakarta Marriott bombing of August 5, 2003, led to a further ban on travel by short-term advisors, which remains in place as of this writing. Thus, in the 27 months since the ELIPS II was launched, the project has been unable to bring short-term advisors into the country and has been operating under various in-country travel restrictions for more than 15 months. This has had a tremendous impact on plans for ELIPS activities; for example, the planned Legislative Forums have been delayed and cancelled four times, the Legislative Drafting Training program planned for late August 2003 has been delayed three times and is tentatively rescheduled for February 2004, and all public forums have been severely curtailed.

Even with these severe handicaps, ELIPS II has been extremely effective in several areas, most notably in taking a lead role in developing the legislative framework for the war on terrorism. With support from USAID, ELIPS II provided the only foreign advisors to the Government of Indonesia's Anti-Terrorism Law drafting team. ELIPS supported public discussions of an early draft law, which was shelved after receiving severe public criticism, and later sent a team of drafters to the United States to discuss alternative drafts that were being floated in Jakarta. ELIPS followed up by providing a highly qualified Canadian advisor to work closely with the drafting team until the law was enacted by emergency decree of the President immediately after the Bali bombings, and then by preparing briefing materials for the Indonesian Department of Justice to use in Parliamentary hearings on the emergency law, which was later ratified and was used to successfully prosecute the Bali Bombers. The law has also recently passed a serious public opinion challenge with support both from many within the security services and from human rights leaders. ELIPS, working closely with its Government of Indonesia counterparts, was able to walk a fine line in responding to the necessity of curbing terrorism while respecting the principles of an emerging democracy.

ELIPS has also played a lead role in the development of Indonesia's anti-money laundering regime. ELIPS' support for this effort stretches back several years, beginning with commentaries on early drafts of the law before there was any donor interest. Working closely with the Australians, ELIPS provided bridging support to the new Indonesian Financial Intelligence Unit (FIU), beginning with sponsorship of an early trip for the team to meet with counterparts in Thailand and Malaysia. The model for donor cooperation that ELIPS II and the Australians have developed to support the Indonesian FIU has been praised by the regional anti-money laundering body (Asia-Pacific Group or APG) and by U.S. government representatives from the Departments of Justice and Treasury. ELIPS Advisors played a key role in the drafting of a comprehensive amendment to the Indonesian anti-money laundering law of 2002. The amendment became law on 13 October 2003 and will be crucial to Indonesia's efforts to curb money laundering.

The end of 2003 marks another turning point for the ELIPS project as two of the four resident advisors leave the project. John Davis, who has been the Regulatory Advisor at the Indonesian Commission for Supervision of Business Competition, returned to Vietnam on New Year's eve after a very successful two year assignment. Jon Eddy, the ELIPS Legal Advisor, returned to the United States on Christmas Eve after a year of whirlwind changes in Indonesia's anti-money laundering regime, most of which Jon had some part in.

Assist the Government of Indonesia in Economic Law

The principal focus of the ELIPS Legal Advisor continued to be on assistance to the recently formed Financial Intelligence Unit (PPATK) combating money laundering. In the early part of the quarter, the Legal Advisor worked with PPATK staff and others on an amendment to the 2002 law on money laundering, which was passed by Parliament and signed by President Megawati in October 2003. The amendment satisfied the concerns of FATF, and as a direct result, Indonesia was invited by FATF to submit an implementation plan, as the next step towards removal from FATF's Non-Cooperative Countries and Territories (NCCT) list. An English translation of Law 15/2002, as amended by Law 25/2003, was prepared by ELIPS for distribution to the FATF and others in the international

community interested in Indonesia's progress. The ELIPS Legal Advisor also had input into two Presidential Decrees establishing the organizational structure and the duties and authority of the PPATK and a Government Regulation on Witness Protection that were signed into law by the President during this quarter.

Also during the quarter, ELIPS II completed an empirical evaluation of the utilization and implementation of the 1999 Secured Transactions Law. An Indonesian graduate of ELIPS's workshop on empirical research (Madison, Wisconsin—July, 2003) conducted the evaluation.

Assist Regulatory Commissions to Function Effectively

The ELIPS Regulatory Advisor continued to support the Commission for Supervision of Business Competition (KPPU) in discussions and drafting of critical documents that will guide the development and operations of the KPPU and define the scope of its authority. Among these documents are: (i) a Supreme Court regulation to govern court handling of appeals of KPPU decisions; (ii) a revised regulation to govern case-handling within the KPPU; and (iii) a set of amendments to Law No. 5/1999 on the Prohibition of Monopoly and Unhealthy Business Competition.

Delivery of a Basic Skills course to the KPPU covering both Microeconomics and Industrial Organization Economics was completed during this quarter. The Basic Skills course is a prerequisite for the ELIPS-designed Professional Skills course that is scheduled to be offered in mid-2004 with the cooperation of the FTC. The key pedagogical feature of the Professional Skills course is that it will focus on analysis of carefully selected and/or drafted fact patterns similar to those appearing in the investigation reports on which the KPPU must base its decisions. At the end of 2003, a team consisting of the Regulatory Advisor, Lexecon, a leading U.S. antitrust consulting firm, and two Indonesian antitrust experts drafted and/or collected relevant fact patterns for use in the Professional Skills course. The fact patterns are being revised and translated into Indonesian following a workshop in which most of the planned instructors for the Professional Skills course simulated KPPU staff analysis of the fact patterns and produced a core set of approximately 15 fact patterns. At the Professional Skills course, this set of fact patterns will be discussed both by a team of expert instructors and the participants themselves in order to develop the participants' abilities to make arguments about the full range of antitrust violations and the defenses to charges of violations that can be raised.

Strengthen Law Schools and Professional Associations and Assist in Outreach

After the major effort of successfully shepherding 17 new Masters candidates through the post 9/11 US visa process, the ELIPS Legal Education Advisor worked with the candidates and their US advisors to ensure that all candidates would have academic schedules that would make possible for them to graduate in one academic year. Four participants from the 2002 group returned from the US during the quarter after completing the requirements for the LLM, and the last candidate from this group of 12 will return in early 2004. Of those who have returned to date, only two have yet to

receive their LL.M.s and those candidates are working with their US university to complete the requirements in the next quarter.

Both ELIPS and the American Bar Association renewed discussions of future cooperation with Indonesian bar associations during the quarter. This was in large part due to two changes in the draft Advocates Act that was finally passed by Parliament, which increased the number of Indonesian bar associations from five to eight, most significantly including the Legal Consultants (Solicitors) Association, and reduced the time for implementation of the Act's program from five years to two years. ELIPS Advisors met in Jakarta with the ABA's new program manager for Asia, Alice Thomas, who is based in Washington. The plan is to organize a conference in Jakarta in the next quarter, supplemented by teleconferences with the ABA and ELIPS contacts in Wisconsin at the Supreme Court and the National Association of Bar Councils.

Develop Human and ICT Resources

A CD-ROM for a 40-hour course on International Sales Transactions taught by Professor Debbie Shon from the University of Southern California School of Law was completed during the quarter. The course is designed as a two unit course which is completely self-contained on one CD-ROM. In addition to 14 hours of lectures, the ELIPS advisors developed Indonesian language slide shows to accompany the lectures so that students who do not understand English could follow the course. The CD-ROM also includes over 200 pages of reading assignments translated into Indonesian, weekly quizzes, resource materials in both English and Indonesian, and links to Internet resources. A teachers' version of the course was also created which includes a 60-page teachers manual, handouts, and additional resources. In November, the ELIPS Legal Education Advisor introduced the CD-ROM at more than a dozen law schools in five cities, with over 100 law teachers participating. Some schools will introduce the CD-ROM course as a standalone option to students taking the regular International Sales Transactions course, while others will develop the CD-ROM course into a four-unit course by including weekly lectures delivered by Indonesian teachers. A number of other alternatives were discussed and will likely be used in 2004. To assist in the development of new CD-ROM based courses, the ELIPS Legal Education Advisor developed a questionnaire to be distributed to students after they complete the course to determine the effectiveness of the course and the technology.

ELIPS advisors also completed the curriculum for a course for bankers on compliance with new anti-money laundering regulations, which will be delivered with faculty from the University of Indonesia and staffers at Citibank Jakarta to bankers in five Indonesian cities over the USAID-funded videoconferencing network, beginning in February 2004. The University of Indonesia is now preparing the course materials.

ELIPS distributed copies of a new book on Indonesian Competition Law, published by the Partnership for Business Competition (a USAID grantee), to judges and nearly 500 law schools throughout Indonesia. The books sent to law schools were accompanied by a questionnaire to determine future needs for such book distributions; in less than two weeks, ELIPS received responses from over 20% of the law schools indicating the dire need for books in Indonesian on law.