

INTERNATIONAL DEVELOPMENT LAW INSTITUTE
ENTERPRISE AND INVESTMENT LAWYERS COURSE

EILC-7E

**May 31 - July 2, 1999
Rome, Italy**

COURSE REPORT

IDLI, Via di San Sebastianello 16, 00187 Rome, Italy

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INTRODUCTION

The International Development Law Institute provides a number of courses and seminars on economic development law. The twelve-week Development Lawyers Course (DLC) imparts basic legal skills in negotiation, advising, drafting, planning, reviewing and revising, monitoring performance and dispute resolution. These skills are practiced in the subject areas of international project financing, international contracting for goods, services and civil works and investment. The International Business Transactions seminars (IBTs) address such topical issues as environmental law, privatization, private and financial sector reform and transnational contracting for the sale of goods seminars. IDLI also designs and conducts in-country training workshops, tailor-made to address specific training needs of a requesting country or region.

The EILC offers training in economic law reform. The need for this training has expanded with the emergence of new market economies in Eastern Europe and the Newly Independent States of the former Soviet Union and economic reforms in countries of Asia, Africa and Latin America. IDLI, closely following this trend, designed and conducted economic law reform training programs and workshops between 1986 and 1991 in several economic sectors. That experience and the interest expressed by lawyers from several countries with economies in transition underlined the need for a comprehensive program addressing institutional and transactional legal issues in the economic reform process. The result was the EILC.

The English EILC is open to selected participants who are called upon to advise private and governmental clients on legal and institutional reform in key economic sectors. This specialization in law reform subjects provides countries in transition (as well as other countries participating in reform in the wake of privatization) with an opportunity to train a core expert group responsible for establishing a sustainable market economic system.

L. Michael Hager
Director

COURSE SCHEDULE OVERVIEW

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY
May	31	1	2	3	4
	ECONOMIC RESTRUCTURING AND REGULATORY REFORM				
1	Orientation Overview	Introduction to Negotiation		State and the Market in the 90's	
	IDLI	Tshuma/Footer		Webb	
June	7	8	9	10	11
	THE ENTERPRISE				
2	Financial Statements and Analysis		Holiday	Enterprise Structure, Governance and Regulation	
	Ferraro			Vickers	
June	14	15	16	17	18
	FINANCE				
3	Banks & Financial Sector Regulation	Commercial Finance		Capital and Securities Markets Regulation	
	Enriques	Whitfield		Carlson	
June	21	22	23	24	25
	INVESTMENT				
4	Improving the Legal Framework for Investment			Competitiveness in the Business Environment	
	Muchlinski			Powell	
June	28	29	30	1	2
	SOCIAL FRAMEWORK				
5	Labour Issues		Environmental Issues		Final Evaluation Closing Ceremony
	Dingake		Clarke		IDLI

COURSE OBJECTIVES

The Enterprise and Investment Lawyers Course is designed to assist lawyers and advisors to governments and the business community to meet the challenges that arise from the myriad of legal and policy issues which many of their countries face in the processes of economic restructuring and attendant law reform. The Course, therefore, focuses on the institutional and legal framework for establishing and operating enterprises essential to the implementation of economic law reform.

Broadly stated, the Course objective is to identify legal issues arising from the economic reform process and thereby to improve the capacity of lawyers and legal advisors to develop appropriate techniques for advising their clients in the economic reform process.

More specifically, by the end of the five-week Course, participants should be able to:

- to advise on the formation and operation of business enterprises;
- to negotiate legal documents related to the transfer of ownership and/or control of economic entities;
- to resolve practical questions of creditors' rights and to define the role of the judicial system in enforcing such rights;
- to describe solutions for achieving an enabling, competitive environment for business transactions;
- to evaluate banking and financial sector operations, instruments and key players;
- to analyze models and negotiate effective instruments for investment; and
- to define the new role of the state in establishing institutions and procedures for the orderly conduct of economic transactions.

SUMMARY OF PROCEEDINGS

This report is a chronological summary of the Enterprise and Investment Lawyers Course. It presents only selected details of the Course and is not intended as a complete overview.

MAY 31, 1999: ORIENTATION

The participants were formally welcomed by **Mr. Pasquale Ferraro**, IDLI Deputy Director and Head of Operations, and the Co-Course Managers, **Ms. Mary Footer**, **Dr. Lawrence Tshuma** and **Ms. María Sara Jijón**. Other members of staff directly involved in the Course introduced themselves as did each of the participants in turn. During the second part of the morning session, the class was given an orientation on administrative matters and survival in Rome by **Ms. Catherine Perrigaud**, Admissions and Evaluation Officer, **Ms. Fiamma Spinelli**, Logistics Officer, and **Ms. Annie Huie**, **Ms. Lisa Hine** and **Ms. Alexandrine Brassart**, Administrative Assistants.

During the afternoon session Ms. Footer and Dr. Tshuma delivered a more detailed introduction to the contents of the Course. They explained the methodology employed by IDLI, which can be characterised as participant-centered. IDLI differentiates itself by encouraging active learning focusing on knowledge, attitude and skills. Moreover, they emphasised the importance of the active contribution of participants and their feedback, given the diversity of their backgrounds, experience and knowledge.

The class then conducted an Expectations Exercise. A list of what they expected to gain from the Course was compiled and written up on the board so as to be able to go back to them at the end of the Course in order to determine whether those expectations would have been met.

ECONOMIC RESTRUCTURING AND REGULATORY REFORM

JUNE 1-2, 1999: INTRODUCTION TO NEGOTIATION

The first session of the section on Economic Restructuring and Regulatory Reform was devoted to an introduction to negotiation skills and was led by **Ms. Mary Footer** and **Dr. Lawrence Tshuma**, the Co-Course Managers. They started by setting out the objectives of the session. Dr. Tshuma then asked the class for their definitions of negotiation. The fundamental idea that emerged was that negotiation is a way to accomplish one's objectives. He moved on to explain three different types of negotiation : deal-making negotiation, dispute-resolution negotiation and policy-making negotiation. Ms. Footer pointed out that negotiation was not limited to law, but could equally be applied to every-day situations.

Next, the class was divided into four groups for an exercise based on the Prisoner's Dilemma. Dr. Tshuma and Ms. Footer used the outcome of the exercise to stress the importance of clear objectives, communication and trust within the negotiation process.

Ms. Footer then discussed the different styles and approaches to negotiation and their respective advantages and disadvantages. She distinguished three styles :

- The hard style, representing the positional approach
- The soft style
- The co-operative style, representing the principled approach

After the lunch break, the class was asked to do an individual test to determine what kind of negotiators they were. Most of the participants were a mixture of aggressive and co-operative negotiators. However, the class indicated that the negotiation style of a person largely depends on the subject matter of the negotiation and the behaviour of the other party ;

Towards the end of the first day the class was divided into six groups and asked to negotiate an agreement on the basis of a set of given objectives for the buyer and the seller. After the exercise each group had to report in detail on the negotiation process. Emphasis was placed on the different interests of the negotiating parties. The outcome of the exercise was used to illustrate the advantages of the principled approach in meeting the interests of both parties.

The following day a systematic approach to preparing for negotiations was explained. Dr. Tshuma emphasised that one should always determine his/her BATNA (Best Alternative To a Negotiated Agreement) before commencing negotiations because this will allow you not to enter into suboptimal agreements. He further stressed that one of the most important elements of team negotiations was the choice of the leader, his/her skills for putting together a team, and the ability to lead it.

The process of negotiation was then divided into four stages :

- The orientation or positioning stage
- The argumentation stage, in which concessions are being made
- The agreement or the breakdown stage

Next, a training video on the negotiation of profitable sales was shown. The first part was devoted to elements of preparations for negotiation. The four elements which were identified as essential for a good negotiation were :

- Aim high
- Get to know your counterpart's shopping list before you start negotiating
- Keep the whole package in mind all the time
- Keep searching for variables

The second part of the video put into practice the four elements mentioned above. Afterward, the video was discussed. Dr. Tshuma explained that it was of vital importance to ask questions in order to obtain as much information as possible. Furthermore, the several tactics used in the video were discussed, e.g. delaying, making notes.

The class then conducted another exercise focusing on effective preparation for negotiation. To finish the session Ms. Footer briefly touched on the different factors which could influence the process, techniques and outcome of the negotiations, such as the subject-matter, location, modes and timing.

JUNE 3-4, 1999: STATE AND THE MARKET IN THE 90'S

This session was led by **Mr. Douglas Webb**, Legal Adviser, Finance and Private Sector Development at the World Bank, Washington, D.C. Mr. Webb began by setting out the main objective of this session: to raise the awareness of the class on the main issues relating to the relationship between legal systems and economic development. He then introduced a case study which illustrated the elements of a legal system which might affect economic development. He asked the class to think about the elements relating to economic development which can be found in the legal systems of their respective countries. A general list of elements was compiled and included, among others: formal laws, courts, customary law, treaties. Mr. Webb explained that the impact of each of these elements on economic development differs from country to country and depends largely on the circumstances of each country.

Next, Mr. Webb classified legal systems into allocative and procedural. He explained that the first phase of legal reform consists in the move from an allocative legal system to a procedural one. He then explained the difference between discretionary-based-legal systems and market-based-legal systems. He described the first legal system as containing rules which are unpredictable, unclear and applied by officials, while the latter consists of rules which are reasonably predictable, clear and applied by market participants. Transition economies want to shift from a discretionary system to a market-based system and the class was asked to give a couple of reasons for this change. The most important reason for the shift seems to be harmonisation as a result of trade agreements either concluded bilaterally or multilaterally (WTO, NAFTA, MERCOSUR). However, he stressed that countries often move forward and backward between these two types of legal systems. Mr. Webb also examined the concept of the "Rule of Law" and the impact it has on economic development.

After the lunch break, Mr. Webb continued with discussing the different legal systems and illustrated the shift from a discretionary-based legal system to a market-based one by discussing the recent Asian economic crisis and the factors which caused it. He then took the class through the topic of the convergence and divergence of laws and institutions. Mr. Webb then explained the relationship between economic policies, economic development and legal systems and the way in which they can influence each other as to cause changes. He discussed the relationship between individual laws and institutions and economic development. He offered a couple of examples: corporate governance; secured lending; bankruptcy; dispute resolution. By using the example of corporate law, he analysed this relationship in its various elements. He asked the class about the economic function of limited liability and the ability to divide ownership. The class offered a

variety of answers: to encourage taking risks, to encourage the formation of capital, to diversify risks, to divide management. He then examined the other examples and their economic functions. The conclusion of the first day was that in most cases legal changes do not cause economic changes, but economic changes can cause legal changes.

The theme of the second day of this session was legal reform and the role of the government. Legal reform was used in the sense of improvements to laws and legal institutions, which is an important responsibility of the state.

Mr. Webb asked the class why it was so difficult to reform institutions. The class gave a number of reasons among which were the lack of capacity, resistance to reform from existing institutions, etc. He asked the class about the actors of the legal reform process. Under normal circumstances it is the Ministry of Justice which takes the lead. However, in many countries its role is rather limited and instead the Ministry of Finance plays a vital role. Besides the governmental institutions, the business community and civil society play an important role. Furthermore, he discussed ways to cover the widest possible range of interests in reform programs.

Mr. Webb then continued with the subject of law reform programs and the ways to set them up. The class gave its views on this subject by stressing that it was necessary to set up a reform commission to prepare proposals. It became apparent that, depending on which model is used, different actors will lead the reform program e.g. in Hungary it is the Ministry of Justice, but in Liberia it is the parliament which leads. Mr. Webb emphasised that there is also a need for a co-ordinating and organising focal point for the reforms. He then discussed the role of legal transplants and international models in these kind of programs. Afterwards the role of foreign and resident advisors in this process was discussed and their respective advantages were listed. The importance of public awareness of legal reform programs was also stressed.

Mr. Webb then moved to another subject, legal reform and legal education, and discussed ways to select people for these courses. The problems relating to the training of the judiciary were highlighted. Furthermore, he discussed several ways to set up independent agencies and balancing accountability and independence. Certain minimum requirements for accountability were then compiled: annual public reports must be provided, parliamentary discussions should be required, appeal to the courts. Mr. Webb then proceeded with explaining what actually happens in many transition economies by using the example of Russia about which he could talk from his own experience.

Furthermore, several aspects of judicial reform were discussed: the role of judges in judicial reform, what the feelings of the public are with respect to the role of the judiciary. The conclusion could be drawn that the public avoids courts because they are unpredictable. The issue of judicial independence was then addressed. At the end of this segment Mr. Webb took the class through corruption and other governance problems. He examined performance of monitoring. To conclude this session, Mr. Webb gave a couple of reasons to explain why legal reform in transition economies is a special challenge. He mentioned the following reasons: lack of prior legal tradition, mistrust of the State and the lack of legal skills.

THE ENTERPRISE

JUNE 7-8, 1999: FINANCIAL STATEMENTS AND ANALYSIS

Mr. Pasquale Ferraro, IDLI Deputy Director and Head of Administration and Finance, opened this section of the course which offers an introduction to accounting for lawyers. Essentially, he sought to equip the participants with the tools to read a balance sheet and an income statement, and the ability to analyse them in order to determine whether a financial analyst should be called in.

He started with the premise that every organisation, whether profit or non-profit, needs information. The two principal categories of information are the narrative information and the numerical information of which the latter can be of monetary or statistical nature. Accounting can be defined as numerical monetary information and is usually divided in three main areas:

- Strict accounting
- Financial accounting
- Management accounting

The first area, better known as book-keeping, constitutes the recording of the monetary numerical information. The second area is the presentation of the recorded information in the form of financial statements. These statements are made for external use only, e.g. for shareholders, banks, etc. The presentation of each financial statement can vary significantly, and it will look very different depending on whether a bank offering a loan or a prospective investor is the recipient. The third area is an internal tool for use by the management of the organisation. It assists them in planning and budgeting implementation, and in controlling the entity's activities.

Mr. Ferraro outlined that there are two main methods of accounting:

- The accrual system
- The cash system

The accrual accounting system records the transaction at the time when it occurs, whether or not it is paid for at that point in time. On the other side, the cash system only records the revenues as earned when the revenue is paid in, and expenses only when cash is paid out. It is possible to use a mixed system.

Mr. Ferraro proceeded to outline the fundamental equation of accounting:

$$\text{ASSETS} = \text{LIABILITIES} + \text{OWNERS' EQUITY}$$

This equation shows how double entry accounting was born. Each action is recorded twice: once as an expense or outgoing in terms of cash, but it is also recorded as an asset in terms of material or equipment.

The afternoon was spent watching a training video on the balance sheet. Mr. Ferraro then examined and analysed the balance sheet more in depth. The individual items included in this document were explained. The first day ended with an exercise where the participants were invited to put the different line items in order and to calculate the working capital which is the total current assets less the total liabilities.

The second day Mr. Ferraro concentrated on the income statement, discussing each separate item. The class was shown how to create ratios from the amounts outlined and how to interpret these ratios, followed by a comparative analysis with other accounting periods and other industries. The session was closed with an exercise on an income statement which required the participants to explain the implications of the different ratios discussed.

JUNE 10-11, 1999: ENTERPRISE STRUCTURE, GOVERNANCE AND REGULATION

The second presentation of this section was delivered by **Mr. Neil Vickers**, Partner, Denton Hall, London, UK.

Mr. Vickers kicked off with a brief historical overview of UK company law. In the early days companies and partnerships were banned under UK law until in the late 19th century the concept of limited liability was introduced. From that point onwards many forms of business organisations have developed. Mr. Vickers highlighted the most common ones; the sole trader, partnerships and public and private limited companies. Whereas within a partnership the partners share the right to take decisions, the property, the profit and the losses, within a company it are the directors who run the business on a day-to-day basis and –mainly for this reason- creditors do not have recourse to shareholders whose liability is limited.

Next, Mr. Vickers discussed the Partnership Deed and the documents needed to set up a company, namely the Memorandum of Association and the Articles of Association. The Memorandum of Association states the name of the company, its objects, the fact that the liability of the shareholders is limited and the share capital of the company. The Articles of Association, on the other hand, set out the contract between the shareholders and the directors. Some legal systems provide a modal form in the Company Act which then may be adopted in full. Going through these documents Mr. Vickers identified the issues which were of particular concern:

- The role and rights of the shareholders in a company
- The purpose and requirements of shareholders' meetings
- The concept of shares and the process of issuing shares
- The various categories of shares and share rights
- The role of management and board structure
- The role of directors as agents
- The powers and duties of directors

He then gave the participants an exercise on the setting-up of a company. The participants were divided in four groups and were asked list the meetings, resolutions and main documents required to implement the transaction.

Mr. Vickers then proceeded to explain the Shareholders' Agreement. He stressed that some legal systems do not recognise these agreements. In such cases, important clauses of the Shareholders' Agreement should be included in the Articles of Association. An example of such a clause is the clause on the transfer of shares in cases where an agreement on certain issues can not be reached. A possible solution is to oblige the party who rejects the proposal put forward to sell his shares. Alternatively, Mr. Vickers mentioned the rule of Russian Roulette: either party may give a transfer notice. It is up to the other party to choose whether to sell or to buy. If neither party implements the Russian Roulette, automatically the winding-up process will be started.

The participants then conducted a second exercise. They were asked to advise a minority party to a joint venture on its rights and duties.

Mr. Vickers concluded this session examining some key provisions which are often found in a purchase agreement and are heavily negotiated. Finally, the participants were divided into groups and asked again to advise a purchaser on certain provisions in the agreement applying the knowledge acquired.

FINANCE

JUNE 14, 1999: BANKS AND FINANCIAL SECTOR REGULATION

This session was led by **Dr. Luca Enriques** who is currently working in the Office for Law and Economics Research of the Central Bank of Italy. Dr. Enriques started his presentation with a definition of the concept of financial intermediation as well as of the role and function of banks in the economy. The following points, which give ground for banking regulation, emerged:

- Banks effect monetary policy
- Banks have a central role in the payment systems
- Banks are high level institutions with no/little monitoring
- Banks have very illiquid assets
- Banks decide in which sectors of the economy they will invest
- Banks allocate credits

The participants then conducted an exercise. The class was divided into four groups and each group had to represent one of the following: investors, bankers, industry or government. The task was to consider the issues which they would like to have addressed in banking regulation. Each of the issues brought up were discussed extensively and Dr.

Enriques referred to existing banking regulation to clarify them. The issues were:

- **Minimum capital and a banking licence**
Depending on the amount and the standards set, competition may be affected which would be to the advantage of existing banks but detrimental to clients.
- **Capital adequacy**
The riskier the loan, the higher the reserves a bank has to keep. This offers more security to clients than capital minimum would, as there is no guarantee that the minimum capital will be preserved during the life of the bank.
- **Non-discriminatory credit policy**
This will ensure that access to funds is not restricted to certain economic sectors only and helps at the same time to reduce risks
- **Banking supervision and criminal liability for violating confidentiality**
- **Interest rates**
Where the industry is interested in a ceiling intended to protect it against interest rates set above market rates, the bankers are more likely to favour a floor. However, even a ceiling has attractive aspects for bankers; they will know other bankers' interests and have a valid reason not to lend money if the maximum interest rates do not cover all costs.
- **Deposit insurance taken by the bank at a state institution**
This will ensure that clients are paid back in full, but might, on the other hand, invoke mismanagement and fraud for bankers know that clients will not suffer from their actions.

Finally, Dr. Enriques described the European Union approach which is characterised first of all by the principle of a universal banking model: at European level banking regulation has partly been harmonised and gives minimum standards for banking supervision and little discretion to state institutions when granting an authorisation. Two other principles are the principle of mutual recognition and home country control. A licence given by the bank's home country has to be recognised in any other Member State of the European Union. It is also the authority of the home country that exercises supervision on branches in other Member States, which allows banks to do business in the whole of the Union according to the rules of the home country.

JUNE 15-16, 1999: COMMERCIAL FINANCE

This presentation on Commercial Finance was undertaken by **Ms. Jane Whitfield** an associate of the London law firm of Baker & McKenzie. She began by explaining the basic concepts and assumptions associated with international bank lending. She then moved on to loan finance, the most common form of bank finance and compared the different types of loan facility -term loan, revolving credit and overdraft facilities-emphasising on:

- Availability
- Drawdown
- Purpose
- Repayment and prepayment
- Acceleration

Looking at the advantages and disadvantages of each type of loan facility, the borrower can maximise access to his/her loan or combined loan facilities.

The next topic was the pricing of loan finance. When involving a large commercial or euro-currency loan, a bank will normally charge a floating rate. This rate is compound of the costs of fund depending on the source, the margin which reflects the profit element and the mandatory costs related to bank supervision which banks pass on to the borrower. A eurocurrency loan is assumed to be funded with funds from the interbank market and - if raised in the London Interbank Market- against LIBOR (London Interbank Offered Rate). This assumption has certain implications, such as the interest payment dates. An interest period will always coincide with a funding period. This allows the bank to use the interest rates paid by the borrower to pay the interest on the interbank funding which is a short term loan.

A loaning bank has four objectives -interests, repayment, general lender protection and fees- which it wants reflected in a loan agreement. Together with the participants Ms. Whitfield went through a loan agreement. She draw the attention to the usual structure and examined some of the key provisions, their scope and the drafting and negotiation of those provisions:

- Financial terms
 - Terms defining the characteristics of the loan facility.
- Monitoring and minding clauses
 - Conditions precedent: conditions which have to be fulfilled before the bank will actually enter into the loan agreement.
 - Representations and warranties: as under law there is no obligation to disclose certain information the bank forces the borrower, by way of representations and warranties, to give it the information it needs to know at the signing of the loan agreement, at certain moments during the life of the loan agreement or through out the loan agreement.
 - Covenants and undertakings: promises made by the borrower and guarantor allowing the bank to control the borrower's activities and to set targets which the borrower has to meet to ensure that he/she is in a position to repay the loan and to pay the interest.
- Margin protection clauses
 - These clauses transfer the hidden costs from the banker to the borrower. Included might be increased costs, tax gross up, broken funding indemnities and other indemnities.
- Enforcement clauses
 - Events of default are categorised as non-payment, non-compliance or anticipatory events and are not necessarily in control of the borrower. An event of default may have as a consequence:
 - Suspension of drawing
 - Acceleration and cancellation
 - Default interest
 - Security becomes enforceable
 - Set-off

- Boilerplate
This section with terms concerning payment, notices, governing law, submission to jurisdiction is by definition standard.

To conclude her presentation, Ms. Whitfield briefly touched upon the syndicated lending, its principal commercial and legal characteristics, and syndicated loan provisions in international loan documentation.

JUNE 16-18, 1999: CAPITAL AND SECURITIES MARKET REGULATION

This session was led by **Mr. Steven Carlson**, Head of the International Practice Group at Dorsey & Whitney LLP, Minneapolis, U.S. Mr. Carlson asked the participants to introduce themselves and to describe their expectations of this session and their particular fields of interest.

Mr. Carlson then started with a brief overview of the background of capital markets to emphasise the fact that this is not a new issue. He then explained that capital markets are a way of raising money. He illustrated the impact of these markets with examples such as the current Asian economic crisis and Mexican crisis of a few years back. He emphasised that market crises affect both strong and weak economies. Mr. Carlson also gave reasons for having capital and securities markets; the main one being to facilitate access to foreign capital.

He then discussed sources of the funds for business. These are:

- Infusions of cash
- Bank and other Institutional loans
- Issuance of stock or other equity interest
- Issuance of debt instruments such as bonds, debentures and notes
- Hybrids i.e. convertible instruments
- Government securities

Mr. Carlson explained that the capital market comprises everything that provides access to capital, while the securities market mainly concentrates on stocks, bonds and is usually the public exchange market.

The class was divided into four groups for an exercise. The groups were asked to come up with a plan for liberalising a hypothetical country's capital markets based on a given factual situation: limited access to foreign and domestic capital, no stock market and the prohibition of foreign investment except for less than 50% ownership of technology businesses. The main issue was whether or not the country should open its door to capital markets. Reporting their recommendations all the groups agreed that it is a good thing to open the doors to capital and that markets should be well regulated.

In the afternoon a video was shown which focused on the functioning of capital markets in London. Afterwards he explained some of the terminology used in the video. He also discussed universal banking and regulatory issues arising from it. He briefly touched upon the different forms of underwriting: firm underwriting as against best effort underwriting.

Mr. Carlson then discussed capital market participants such as issuers, insiders, promoters, bankers and financial intermediaries (e.g. rating agencies or merchant banks) and their respective functions. Regarding the influence of speculators on capital markets Mr. Carlson described the different ways in which speculations may occur; such as selling short and insider trading.

For the second exercise the class was divided into groups of six and they were asked, in the capacity as financial experts, to develop a financing plan for the building of a very expensive facility, estimated to cost the equivalent, in the local currency, of £200 million. In doing this, certain facts had to be taken into account, such as interest rates, securities required and other conditions to the different investment instruments.

Mr. Carlson moved on by discussing some of the problems of capital market. He emphasised the importance of maintaining investor confidence and market integrity and illustrated this by giving a couple of examples such as the 1929 economic crisis in the U.S. One of the features of maintaining investor confidence is to ensure that all investors are treated equally. Often this is the task of a central governmental regulatory body such as the Securities and Exchange Commission (SEC) in the U.S.

Mr. Carlson then discussed the topic of disclosure in capital markets. He concentrated on the US capital market in which one can find a system of total disclosure. The exemptions to registration were also discussed. To give the class an idea of the relevant issues to disclose, he gave another exercise. The class was divided into groups of five and asked to rewrite the annual report of company X, making use of the annual reports of several, mostly U.S., companies which are listed on the stock market and had been distributed earlier. After discussing the answers from the groups, Mr. Carlson explained that everything materially related to the company's business should be disclosed in the annual report.

In the final day of his presentation, Mr. Carlson shifted to the regulatory issues of capital markets. First, he discussed several areas of abuses such as fraud, self-dealing, abuse by stock brokers or underwriters and insider trading. Then the available solutions to remedy these abuses were discussed. These included:

- The use of criminal law
- The use of self-regulatory organisations (SRO's), which supervise the markets
- Regulation on the governmental level:
 - The disclosure system i.e. a company is obligated by law to disclose everything that is relevant. This way a fair environment is created. This system can be found in the US and Hungary.
 - The merit system which requires regulators to penetrate behind disclosure and get to the quality of the information disclosed. In this system, a governmental body often has the power to evaluate the information disclosed and to decide whether more needs to be disclosed. Elements of this system can be found in France, Germany and the U.K..
- The imposition of civil penalties

- The use of private lawsuits

In discussing these solutions, Mr. Carlson used the experiences of the participants in order to give the class an idea of the different solutions that exist in various countries. He emphasised that there is an international tendency to shift from criminal procedures to the use of civil procedures, because criminal proceedings are often very slow and it is very hard to prove the abuses.

Mr. Carlson discussed the operation and regulation of mutual funds. These funds can be divided into open-end companies and closed-end funds. Mutual funds are of particular interest for smaller investors because by using these funds, smaller investors are given an opportunity to diversify into various shares of different companies. The relevant regulatory rules differ slightly from the capital market rules in some areas e.g. disclosure.

The session finished with a discussion of an article from the International Herald Tribune of June 16, 1999, under the heading: "Global Economy Needs Better Shock Absorbers". In discussing this article Mr. Carlson asked the participants to think about the consequences a crisis in their countries.

INVESTMENT

JUNE 21-23, 1999: IMPROVING THE LEGAL FRAMEWORK FOR INVESTMENT

The investment section of the Course was opened by **Prof. Peter Muchlinski**, Draper's Professor of Law at Queen Mary and Westfield College, University of London, specialising in International and European Business Law.

Prof. Muchlinski began by outlining his presentation and explained that he would focus on the conceptual framework for Multinational Enterprises (MNEs), their regulation and their limits. The first task was to arrive at a workable definition of MNEs. A series of definitions, from a more legal definition to an economic one, were illustrated and discussed.

After introducing his subject, Prof. Muchlinski analysed together with the participants the motives for the existence of multinationals. Four main strategies were discussed, namely resource seeking, efficiency seeking, technology seeking and market seeking. Market access can be realised using a simple export sale. Depending on the transaction and other costs as well as the level of demand a MNE will adopt different forms of legal organisation. The various possibilities are as follows:

- Contract: producer contracts directly with the local consumer or local distributor
- Corporation: producer either sets up a local sales subsidiary or grants a licence to produce locally
- Production: producer sets up a local production subsidiary

The next main topic addressed was restrictions on entry and establishment by MNEs. Prof. Muchlinski explained that patterns of foreign investment will be guided in part by the prevailing political ideology. Nevertheless, from a legal/technical perspective, one can analyse a spectrum ranging from absolute prohibition to 'open door' policies.

Although there are no examples today of countries applying an absolute prohibition policy, there are examples of sectoral exclusion policies where foreign investor participation is excluded. Such restrictions are usually adopted in order to protect infant, defence or utility industries. Slightly less restrictive are shareholder limits, for example, the 'Golden Share' provision in UK law.

Next along the spectrum are joint venture and joint management. The relevant Chinese law on joint ventures was discussed, China being one of the few examples of socialist-style joint venture law still in force. Most of the Eastern block countries have adopted or are now adopting screening laws containing licence and reviewing requirements. Poland, Hungary and Russia are, in fact, all following similar liberalisation models whereby foreign investment is encouraged albeit subject to screening procedures. Prof. Muchlinski illustrated other examples of screening laws, notably those of Canada and Mexico. He then pointed out that even in the absence of a special law for foreign investment one could speak of 'hidden screening' if an investment law although covering all investments is targeted at those sectors of the economy where almost only foreign investors are active. 'Hidden screening' can also occur through other laws, such as privatisation law, competition law or company law as was the case in the Czech brewing industry, Czech Budvar. Laws other than foreign investment laws were used to control entry and establishment, in this case of the American beer company Anheuser-Busch.

The final variety of screening laws analysed is the 'open door' policy in which case no formal investment law is present and positive rights might be given. However, not inconsistent is the present of reserved areas and there can still be 'hidden screening'.

During the next session, Mr. Muchlinski analysed some investment promotion techniques. The participants were asked to list different investment incentives as well as what they thought the advantages and disadvantages for the host state would be. The results portrayed a sensitivity not only to financial incentives specifically, but also to the broader investment environment. Although incentives are generally viewed as a positive thing, Mr. Muchlinski explained, there is an argument against over generous incentives as they may provide means of protectionism resulting in the diversion of free market principles.

As further investment promotion techniques Mr. Muchlinski mentioned the export processing zones, positive liberalisation obligations in treaties and finally the guarantees offered in the foreign investment law. These guarantees can be differentiated in core general standards of treatment and in specific standards. The first mentioned category covers the following principles:

- Non-discrimination or non-differential treatment
 - National treatment
 - Most favoured nation
- Fair and equitable treatment

- General duty of observance of obligations

Whereas the following are considered to be specific standards:

- Protection against and compensation for expropriation
- Protection against and compensation for loss due to armed conflict
- Free transfer of funds
- General standards as to dispute settlement

The third and last day of this presentation was devoted to the relevant international issues surrounding foreign direct investment, namely the settlement of international investment disputes and the development and evolution of international standards for MNEs.

After outlining the traditional methods of dispute settlement, such as diplomatic protection and their inappropriateness for international investment disputes, Prof. Muchlinski went on to a detailed discussion of the International Center for the Settlement of Investment Disputes (ICSID). This is a form of de-localised arbitration, preferred by multinationals because of the traditional suspicion of dispute settlement mechanisms in developing countries. The ICSID Convention was set up by the World Bank in the 1960s specifically to deal with problems between MNEs and host states. In deciding whether an MNE is involved the ICSID Convention applies a double test. The parent company must have factual control over the subsidiary and must have given its -implied- consent to the subsidiary for its actions.

The final topic of the presentation was the development and evolution of international standards on international investment. After a brief introduction to the sources of public international law and the first attempts at formulating international standards, Prof. Muchlinski went on to discuss the surplus value of international standards. Prof. Muchlinski and the participants concluded that up until now investment does not seem to have suffered from the absence of multilateral international standards. Would an agreement on international standards be reached they should ideally retain a degree of flexibility for development, both in the objectives, the substantive provisions and the implementation procedures.

JUNE 24-25, 1999: COMPETITIVENESS IN THE BUSINESS ENVIRONMENT

This session was led by **Mr. Mark D. Powell**, Partner, White & Case LLP, based in Brussels, Belgium.

Mr. Powell started by asking the participants to think about the motives for introducing competition law, how it should operate, which authority should be operating and monitoring, where and when. In plenary each of the questions was extensively discussed. The participants concluded that competition rules are needed not only to prevent collusion and abuse of monopolies, but also to protect consumers' welfare. The rules should be laid down by law, as to have the state's support and to limit excessive discretion. Mr. Powell outlined the advantages and disadvantages of an independent competition authority and a special competition law tribunal. As independent authority offers better consumer protection, it was preferred by the participants. As for the

territorial application, the participants agreed that the rules should apply both within the home state and within other states when actions of enterprises have effect on the home country's market. Finally, Mr. Powell described the European Union approach which is characterised by an ex-ante control on mergers and acquisitions and an ex-post control on conduct, that is, the abuse of a dominant position.

Mr. Powell then analysed the application of competition law to the telecommunications sector. On January 1, 1998 the European telecommunications market was opened to full-scale competition whereas as ten years ago there had been none. In most European countries a single telephone company provided basic telecommunication. A move towards liberalisation began during the Thatcher Government in the UK when it decided to split up British Telecom. This eventually led to the entry of a second main telecom provider and providers of value added telecommunication services in the UK market in the mid 1980's and soon these were competing for a share of market power. Parallel developments have taken place in the other Member States of the European Union and today consumers are beginning to see the benefits of liberalisation of the telecom market, as prices are falling and increased investment means that telecom equipment and services are becoming more sophisticated.

In the early days of liberalisation there were several problems. There was no real market and Europe was falling behind the USA and Japan in creating one. Something needed to be done in order to stimulate the European telecommunications market. The first condition was to find a common standard whereby systems could be harmonised. The second condition was to liberalise the market in order to create growth in the telecommunications market. However, with the growing liberalisation and the equally growing competition it became clear that the competition rules with their ex-post application were not sufficient. In order to anticipate abuse specific -telecom- rules had been introduced. Once the market has been settled these specific rules can be abolished and which leaves only the competition rules.

Mr. Powell then gave an overview of the European Competition Law using it as a model that at some points might be advisable to follow, but at other points will allow countries to learn from the 'European' failures. He first explained the system of Art. 85 EC which starts with the prohibition of collusion, the punishment in the second paragraph and in the third paragraph the possibility of an exemption. In general the European Commission will give a comfort letter stating that the agreement falls within a block exemption or block the agreement. When deciding on agreements the Commission is driven by the concept of a single market. This explains its adverse attitude towards vertical restraints, although recently the Commission is moving to a more 'common sense' approach taking an economic point of view. With this new approach in mind Mr. Powell discussed various types of agreements, such as selective distribution and franchising.

The participants were then shown a promotional video prepared by a consultant agency, addressed to enterprises operating within the European Union, demonstrating in which areas enterprises should be aware of potential actions of the Commission.

Moving on to Art. 86 EC on the abuse of a dominant position, Mr. Powell asked the participants to define the market of several products, looking at the demand and supply side substitutability and potential competition. Once the relevant product market has been

defined, the relevant geographical market has to be determined. After that Mr. Powell looked at whether a dominant position was present and finally whether this position was being abused. Under European law dominance is deemed to exist if a company has a 40 % market share and abuse may consist in:

- Abuse in respect of pricing
 - Excessive pricing
 - Predatory pricing
 - Discriminatory pricing
- Other forms of abuse
 - Tying/bundling
 - Refusal to supply
 - Unfair practices
 - Discrimination

To conclude his presentation, Mr. Powell spent some time going over the Merger Regulation which is designed to apply before a dominant position is being created due to mergers and acquisitions. He emphasised that this regulation is more strict than Art. 86 EC, for under the regulation creating or strengthening a dominant position is prohibited, whereas under Art. 86 EC only the abuse of a dominant position is prohibited.

SOCIAL FRAMEWORK

JUNE 28-29, 1999: LABOUR ISSUES

The section on Labour Issues was delivered by **Mr. Oagile Key Dingake**, lecturer in the Department of Law at the University of Botswana. His presentation focused on labour issues especially in the context of economic and enterprise restructuring.

Mr. Dingake opened his presentation by giving the general accepted justification for labour law: Workers enter the labour market as a weaker party, hence there is need for protection. He raised the question whether in the present era this still is a valid justification or instead labour law should be regulated by the market. Mr. Dingake and the participants concluded that regulation is needed, but not at the detriment of labour security. The state, therefore, has a role in finding a balance amounting to a regulated flexibility.

Next, Mr. Dingake focused on the collective right of freedom of association which embodies the right of the workforce to come together to confront the employer in order to improve working conditions. The participants were asked to whether and, if so, to what extent the freedom of association is restricted in their country. The exercise was intended to show that although it is a basic right mentioned in the Universal Declaration of Human Rights and reflecting principles of customary international law, one can not speak of an absolute universal right. Limitations present are amongst others registration requirements, minimum number of members and exclusion membership for members of management. Following, the participants discussed the actual need for the restrictions and their

acceptability, extending the discussion to the right of collective bargaining and the right to strike. They concluded that limitations are permissible only if demonstrably necessary.

Mr. Dingake then discussed the basic conditions of service, concentrating mainly on the hours of work, payment of wages and the minimum wage. These basic conditions should accrue to all, but the political, social and economic context has to be taken into account. A minimum wage has as an advantage the avoidance of exploitation, the reduction of industrial unrest and the increase of productivity. However, at the same time it might affect the competitiveness of a country and lead to unemployment and the closedown of enterprises as employers might not be able to meet the extra costs of employment.

Workers rights have been broadly recognised in the Universal Declaration of Human Rights, the ILO Constitution, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The ILO has prioritised these rights and translated them in more realistic, core labour rights, including the right to association, the right to collective bargaining and the prohibition of forced labour or child labour. It has also provided a Tripartite Declaration on MNE and Social Policy. Together with the OECD Guidelines for Multinational Enterprises it gives a set of guidelines for governments, employers, workers and MNEs which in the era of globalisation become more and more present. Both documents urge the parties to respect the Universal Declaration of Human Rights and to aim at:

- Employment creation
- Job security guarantees
- Equal opportunity and treatment
- Training
- Improved working conditions

However, in many cases the primacy of national law has been recognised. The two first mentioned rights are therefore limited to the extent that sufficient resources are available. But even taken into account this limitation, both procedural and substantive fairness will have to be respected.

JUNE 30-JULY 1, 1999: ENVIRONMENTAL ISSUES

Mr. Ray Clarke is a Partner and Head of Environmental Litigation in the Environment Department at the Nabarro Nathanson National Centre for Law in Industry in Sheffield, U.K.

He began by stating that he would be looking at the principal issues which environmental law and regulation present to private enterprises. In this light, he mentioned the two main principles which govern environmental regulation, the first one being 'Prevention is better than cure' which means that regulations aim at preventing pollution at source, and the second one being 'The polluter pays'. If not acting in compliance with the law the polluter might have to occur following costs:

- Fines
- Community benefits to off-set the impact

- Green taxes to encourage the use of less polluting methods or alternatives
- Self-regulation, e.g. in the form of an environmental management scheme
- Inspection fees

He then explained the concept of 'Integrated Pollution Control' (IPC), an environmental policy now reflected in the legislation of most Western countries. IPC recognises that pollutants have effects in media other than those they are released into and that reducing the amount of discharged into one medium might increase the discharge into another. So, instead of tackling pollution in land, air, etc. separately IPC tackles them simultaneously. And while previously concentrating mainly at the process the environmental agencies now also monitor the site conditions and the effects off-site.

Environmental regulation is costly to private enterprises since they are obliged to obtain permits and are imposed substantial penalties for non-compliance. Enforcement provisions in the UK can affect businesses in several ways, Mr. Clarke explained. If a business is found guilty of an environmental offence (often a criminal offence) this will have a negative domino effect in that, aside from the negative publicity and a decreased value of the investment, a business may not qualify for future permits it may apply for.

The next two issues covered were the liability of directors and managers of a company and the duty of care. Firstly, legal liability applies to directors and managers personally. This means that these persons can be held personally liable for environmental damage, provided the prosecutor proves they had 'effective control' over the damage. Mr. Clarke explained that such liability is increasingly preoccupying managers who are now demanding environmental audit services in order to ascertain all potential liabilities before making investment decisions. Even insolvency agents and banks lending money to companies are becoming increasingly involved in this process.

Secondly, Mr. Clarke explained the duty of care provision in relation to waste disposal. This provision reflects the 'cradle to grave' approach to liability in that it imposes a duty of care on all operators in the waste cycle chain, from importers and producers of waste to disposers to:

- To manage it in order to avoid offences
- To prevent its escape
- To record it (to create a paper-trail)

A licence to dispose of waste is granted to persons who are 'fit and proper' and this includes being free of convictions for relevant offences.

Moving on Mr. Clarke illustrated the case of water pollution and contaminated land using the UK legislation surrounding this issues as a model. He focused on the definition of water pollution in relation to contaminated land and how to identify it, implications for companies and duties of local authorities, liability groups and several approaches to dealing with pollution and contamination.

The following session opened with an overview of the law on Environmental Impact Assessment (EIA). The source of the UK law on EIA is the EC Directive 85/337 on EIA. Briefly, this Directive requires member states to adopt “all measures necessary to ensure that before consent is given, projects likely to have significant effect on the environment by virtue inter alia of their nature, size or location, are made subject to assessment with regard to their effects”. The result of this law, Mr. Clarke explained, is that environmental statements and planning permissions are now the order of the day.

The participants were then given a hypothetical industrial development scenario in which they had to identify the issues facing a developer who needs to produce an environmental statement to the local planning authorities. They were asked to offer their views on whether an EIA was required, what the principle impacts of the project would be and whether mitigating measures could offer a solution. After a plenary discussion of the matters brought up, Mr. Clarke, illustrating his point with case law, underlined that an EIA must not be a sham.

Mr. Clarke then presented the Environmental Management System (EMS), an obligation imposed on companies to achieve and demonstrate sound environmental performance. EMS entails a continuous monitoring and implementation of aspects, such as risk assessment, regulatory checks and balances, a clear delegation of responsibilities and thoroughly prepared emergency procedures. As final topic Mr. Clarke discussed due diligence. When acquiring an existing company, shares or assets, concluded Mr. Clarke, the buyer exercises due diligence in order to find out whether the price he/she pays reflects the true value.

JULY 2, 1999: FINAL EVALUATION AND CLOSING CEREMONY

The Course ended with final written and oral evaluations by the participants. They analysed the quality of instruction, the materials and the overall structure of the Course and made recommendations for improvement. The Course officially ended with a ceremony in which the participants received their certificates from **Mr. Pasquale Ferraro**, the Deputy Director of IDLI.

EXTRA-CURRICULAR ACTIVITIES

During the Course, after class hours, some participants visited several Rome-based firms to discuss their activities and establish contact on an informal basis. The following firms hosted the participants' visits:

Monday, June 21, 1999:

Studio Legale Murano

Contact Person: *Dott. Bruno Dard*

Tuesday, June 22, 1999:

Studio Legale Dalla Vedova

Contact Person: *Dott. Luca Pocobelli*

Wednesday, June 23, 1999:

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Tuesday, June 29, 1999:

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Ray Clarke is a Partner and Head of Environmental Litigation in the Environment Department at the Nabarro Nathanson National Centre for Law in Industry in Sheffield, U.K. He formerly worked with the Legal Department of British Coal. He served his Articles with West Yorkshire Metropolitan County Council and British Coal. Prior to his legal career, Mr. Clarke spent a substantial period involved in overseas development projects principally in Central Africa and Papua, New Guinea. He has wide experience of planning and regeneration, particularly major projects involving environmental impact assessment. He advises clients across the whole range of environmental issues including integrated pollution control applications, enforcement and due diligence in acquisitions. He also regularly appears as an advocate, acting for both "poacher and gamekeeper". His clients include construction and mining companies, the Coal Authority, water and chemical companies and regeneration bodies.

Mr. Clarke has lectured extensively at Universities and Conferences and is involved in the continued professional development of other professions such as the Royal Institution of Chartered Surveyors, bankers and insurers.

Mr. Clarke is currently a Council Director and Regional Chairman of the United Kingdom Environmental Law Association and is a fellow of the Institute of Quarrying.

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Oagile Key Dingake is a lecturer in the Department of Law at the University of Botswana. He obtained his Bachelors of Law Degree from the University of Botswana, and thereafter proceeded to do this Masters Degree in Commercial Law at the University of London. He also attended a series of short courses in International Development

Studies at the University of Oslo and London School of Economics and Political Science. He is an admitted attorney of the High Court of Botswana. Mr. Dingake has acted as the Judge of the Industrial Court of Botswana. He has done numerous legal opinions on various aspects of Labour Law in Botswana for the Trade Unions and Employer's Organizations.

Mr. Dingake is a Research Associate with a regional Women's Non-Governmental Organization called Women and the Law Research Project in Southern Africa (WLSA). His publications include *Administrative Law in Botswana: Cases and Materials* (1996), as well as several articles on constitutional and labour law issues in law journals. He is currently working on two monographs: *Key Aspects of the Constitutional Law of Botswana* and *Botswana's Labour Law Digest*.

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Dr. Luca Enriques is an Italian lawyer who obtained a Degree in Law from the University of Bologna, a LL.M. from Harvard Law School of Cambridge, MA as well as a S.J.D. on Corporate Law from the Università Commerciale L. Bocconi of Milan.

Dr. Enriques has been working for the Bank of Italy since 1995. He began as a lawyer within the Legislation Division of the Banking Supervision Department. He now works for the Office for Law and Economics Research of the Bank of Italy in Rome. In 1997 and 1998, he collaborated with the Italian Ministry of the Treasury in the drafting of the Consolidated Act on Financial Intermediation 1998 (Testo unico in materia di intermediazione finanziaria), which deeply reformed the Italian securities laws and the corporate governance of listed companies. He also worked for the Italian Law Firm Cagli Alessandri in Bologna (1993-1994) and within the Stock Exchange Office of CONSOB in Rome in 1993.

He has participated as a lecturer in several classes and Seminars on corporate law and economics since 1996 held in the Bank of Italy and several Italian Universities as the University La Sapienza in Rome, the Universities of Trento, Bologna and LUISS (Rome).

Dr. Enriques has published many articles in Italian law reviews on topics such as self-dealing by corporate directors, takeover law, the regulation of financial services and financial institutions, corporate groups etc.

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Mr. Ferraro heads the Operations Department of the International Development Law Institute (IDLI). His background includes extensive experience in the management of private and public sector enterprises and institutions. He holds a Bachelor of Business Administration from John Cabot University and a Master of Science of Management from Boston University. Mr. Ferraro is an Italian national.

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Ms. Footer, a British and Dutch national, gained her Doctoraal examen (J.D.) from the University of the Netherlands Antilles (1985) and a Master of Laws degree (LL.M.) in 1988 from University College London. She is a past Fellow in Public International Law at the British Institute of International & Comparative Law, London. Before joining IDLI, she was a Lecturer in Law at University College London (1988-1995) and the University of Kent at Canterbury (1995) where she taught Public International Law, International Economic Law and the External Relations Law of the European Communities.

She gained experience in Corporate Law and International Financial Law as an Associate with the firm of Smeets, Thesseling, van Bokhorst & Spigt, Curaçao, Netherlands Antilles (1984-1987). She has also worked as a legal consultant to the European Commission, Brussels (DG XIII) on European telecommunications law and policy (1989-1991) and was a research assistant to Professor Mendelson, Counsel to the Government of Qatar, in the *ICJ Case Concerning the Maritime Delimitation and Territorial Questions Between Qatar and Bahrain* (1988-1992).

Ms. Footer is a Senior Visiting Fellow in International Economic Law (since 1992) at the Centre for Commercial Law Studies, Queen Mary & Westfield College, University of London and a Member of the ILA Committee on International Trade Law (since 1993). Ms. Footer has published widely on matters concerning GATT/WTO and the external relations of the European Union.

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María Sara Jijón is an Ecuadorian national. Ms. Jijón was awarded a LL.B. from the Catholic University of Ecuador and an ITP/LL.M. from Harvard University (HLS). Between 1991 and 1994, Ms. Jijón worked for Price Waterhouse Ecuador, as Tax and Legal Consultant. During 1995 she worked as Legal Adviser to the Ministry of Finance. Since January 1996, she was the Legal Adviser of ABN AMRO Bank N.V., Ecuador Branch. Ms. Jijón was a lecturer at the Pontificia Universidad Católica del Ecuador in Economics for Lawyers, while advising both the Ministry of Finance and ABN AMRO Bank. Her main areas of activity are finance, banking and taxation.

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Peter Muchlinski is the Draper's Professor of Law in the Faculty of Law, Queen Mary and Westfield College, University of London. He specializes in international and European business law. He is the author of *Multinational Enterprises and the Law* (Blackwell Publishers, 1995 reprinted 1996, 1997 paperback edition due August 1999). From 1979 to 1981, he taught international law at Christ's College, Cambridge. From 1979 to 1980, he was a research officer at the British Institute of Human Rights. From 1981 to 1983, he was a lecturer in law at the University of Kent. From 1983 to 1996, he was a lecturer in law at LSE and from 1996 to 1998 he was a senior lecturer in law at LSE. In 1990, he qualified as a barrister in the field of commercial law and is a door tenant at Brick Court Chambers, London. He is also a Visiting Professor of Law at the University of Notre Dame London Law Centre where he teaches in the field of multinational enterprises and the law. Since July 1997 he has acted as a consultant to the Division on Investment, Technology and Enterprise Development of UNCTAD and is currently a Senior Adviser to the UNCTAD Issues Papers Series on International Investment Agreements.

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Mark Powell, a British national, obtained his LL.B. from the University of Lancaster in 1983, and his Professional Practising Certificate from the Chester College of Law in 1985. He was a partner in Forrester Norall & Sutton, a Brussels firm concentrating in EU and international law, until its merger with White & Case in 1998. Mr. Powell concentrates in European trade and competition law, with a particular focus on information technology, media and intellectual property.

Mr. Powell has acted on behalf of telecommunications operators, broadcasters, video games producers, film producers and pharmaceutical companies in investigations by the European Commission's Competition Directorate. He has undertaken a detailed study for the Commission's Competition Directorate on the establishment of a European Telecommunications Authority and assisted a third-country government in its negotiations on the WTO Basic Telecommunications Agreement. He has also advised on the regulatory aspects of public offerings in the telecommunications and energy sectors.

In addition, Mr. Powell regularly assists large corporations on the national and EC competition law aspects of joint ventures, mergers and acquisitions. Recent transactions have called for an in-depth analysis of the pharmaceuticals, diagnostics petrochemicals and defense sectors.

Mr. Powell has published extensively on technology issues and is a correspondent for the *Computer Law and Security Report*. He also regularly speaks at conferences on European law issues.

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