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REPORT TO THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT ON THE ACTIVITIES OF THE AMERICAN BAR ASSOCIATION CENTRAL AND EAST EUROPEAN LAW INITIATIVE (CEELI) UNDER THE COMMERCIAL/BUSINESS PRACTICES LAW COMPONENT OF THE COMPETITION POLICY, LAWS AND REGULATIONS PROJECT (PROJECT NUMBER 180-0026) (GRANT NUMBER EUR-0026-G-00-2064-00)

JULY 1993 - DECEMBER 1993

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I. INTRODUCTION

In May 1992, the American Bar Association Central and East European Law Initiative (CEELI) obtained a grant in the amount of $2.1 million for the period May 1, 1992 through April, 1994 from the U.S. Agency for International Development (AID) under its "Commercial/Business Practices Law Component of the Competition, Policy, Laws and Regulations Project." CEELI implemented its Commercial Law Reform Project in four "priority countries:" Albania; Bulgaria; Lithuania; and Poland.

Pursuant to the grant, this report covers activities during the period July 1993 through December 1993. CEELI provides technical legal assistance under this grant through the use of the following components: (1) Liaisons and Legal Specialists; (2) Assessments of Draft Legislation and Concept Papers; (3) Legal Training Workshops; (4) Technical Legal Assistance Workshops; and (5) Support to Indigenous NGOs for the Development of Commercial Law Centers.

Within the four "priority countries" during the period July 1993 through December 1993, CEELI placed 7 Liaisons, 5 Legal Specialists, provided 4 assessments of draft commercial law legislation, 1 concept papers, conducted 1 legal training workshop, 1 technical assistance workshop, and 1 lawyers internship program. Furthermore, during the period, CEELI provided financial support and assistance for 3 "Commercial Law Centers" and reached a final negotiation stage for support of a Commercial Law Center in Warsaw, Poland.

A specific country-by-country breakdown, including a description of major efforts, accomplishments and problems is provided below.

II. COUNTRY-BY-COUNTRY REPORT

ALBANIA

1. Resident Liaison and Legal Specialist Activities

In July 1993, Roland Bassett, an experienced attorney with a commercial practice in Galveston, Texas, arrived in Tirana to serve as CEELI's first liaison to Albania dedicated exclusively to commercial law issues. During his tenure in Tirana, Mr. Bassett worked on a variety of matters. For example, Mr. Bassett

-- Advised officials of the Ministry of Trade on issues related to the Ministry's participation in the European Community/PHARE Small and Medium Enterprises ("SME") program.

-- Advised officials of the Ministry of Trade on issues arising in the course of their preparation of a new foreign investment law.

-- Provided comments to the director of the National Agency for Privatization on a draft of privatization legislation.

-- Worked closely with the Committee on Science and Technology in connection with the Committee's preparation of intellectual property legislation (and provided various materials on this subject to the Committee), and coordinated a formal CEELI assessment of such legislation.

-- Counseled staff at the Ministry of Industry, Mines and Energy on a joint venture project between a British oil company and Albpetrol (the Albanian state-owned oil and gas company).

-- Provided advice to officials responsible for negotiating a U.S.-Albanian bilateral investment treaty agreement.

-- Organized and catalogued a small reference library of American law books, on topics from constitutional law to secured transactions.

-- Began publication of the "CEELI News," an English-Albanian newsletter that is circulated throughout various governmental ministries and describes CEELI's activities and capabilities in Albania.

Mr. Bassett also was requested to assist with preparation of a new commercial code for Albania, a wide-ranging and ambitious -- and much-needed -- project. In response, CEELI compiled, and Mr. Bassett provided to CEELI's Albanian hosts, materials related to the

regulation of commercial matters in various West European countries.[1]

In addition to Mr. Bassett, two legal specialists that also were funded by commercial law grant funds concluded their work in Tirana during the reporting period. Duane Craske, a state court judge from Alaska, worked in Tirana from January to July 1993. Judge Craske worked with Albanian judges, providing them with information on judicial structures, functioning, and training in Western states, and analyzing for CEELI the issues confronting the Albanian judiciary and the types of assistance (particularly training) that are needed.

Daniel Gutterman served as a legal specialist in the Ministry of Trade, from April to July 1993. Mr. Gutterman, an experienced corporate attorney from New York City, advised the Ministry on investment proposals submitted by foreign interests, and provided informal on-the-job instruction to Ministry officials regarding how to analyze and conduct "due diligence" of incoming proposals, and how to interface with potential foreign investors. Mr. Gutterman also worked closely with Ministry officials tc analyze and recommend improvements to the EC/PHARE SME program. Due to Mr. Bassett's arrival in July, Mr. Gutterman was not replaced.

2. Draft Law Assessments and Concept Papers

In November, CEELI completed and transmitted to the Committee on Science and Technology written comments on a draft law on intellectual property. The Committee was very pleased with the comments, and it is anticipated that they will result in an improved piece of legislation.[2]

3. Training Workshops

An important element in CEELI's assistance in Albania during the reporting period was a four-day training workshop in Tirana, on "How to Negotiate, Structure and Document International Joint Ventures." The workshop, which was held in July, was co-sponsored by CEELI and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce.[3]

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[1]CEELI has not opened a commercial law center in Tirana, as it has not identified a suitable local NGO "partner." However, CEELI has provided its commercial law liaison with a computer and printer, which can be used at a commercial law center in the future.

[2]A copy of CEELI's assessment is attached as Appendix 1.

[3]In October, CEELI and CLDP submitted to USAID a report describing and analyzing the training workshop. A copy of the report is attached as Appendix 2.

The program was developed in response to requests from Albanian officials and private practitioners with whom CEELI and CLDP have worked in the past. These requests indicated that what was desired and needed was a course that would provide an Albanian official or lawyer with the ability and confidence to negotiate and structure an international joint venture. Accordingly, CEELI and CLDP designed the course to include both (1) a basic overview of the types of legal and business issues that should be considered when confronting an international joint venture; and (2) "hands-on," participatory, sessions designed to train the Albanians in how to negotiate and document an international joint venture. In keeping with this design, invitations to the program aimed to attract a group of no more than 20 to 30 participants.

All faculty members had substantive knowledge of international joint ventures, and experience negotiating, structuring, and documenting such ventures.[4] Additionally, A. David Meyer, the program chair, and Linda Wells and Nancy Eller, faculty members, had previously had experience working with Albanians, in Albania, and thus were sensitive to their needs and desires. Claudio Cocuzza, the Italian solicitor who filled out the roster, had previously taught at legal seminars and conferences, and his expertise in Italian corporate law was extremely useful in view of the reliance, in Albania, on Italian law and procedure. Additionally, Mr. Cocuzza's fluency in English was an invaluable asset.

The 20 to 30 participants who attended the workshop included mid- to senior level officials of various government ministries, including Trade; Commerce; Construction; Agriculture; Industry & Mining; and Transportation. Additionally, several foreign consultants attended (e.g., a representative of the World Bank, attorneys with "Volunteers in Overseas Assistance," and an outside consultant to the Ministry of Agriculture), and Minister of Trade Artan Hoxha attended the last portion of the program.[5] The average age of attendees appeared to be early to mid-30's.

As noted above, the workshop was intended both to alert the students to the legal and business issues that arise in international joint ventures, and to provide them with as much "hands-on," participatory training and experience in negotiating and documenting such transactions as possible. Accordingly, time was divided between more traditional "teaching" and "role play," inter-active training exercises.

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[4]The program was chaired by A. David Meyer, a former CEELI legal specialist to the Ministry of Trade and counsel to an American chemical manufacturing company who also serves as outside corporate counsel for a group of firms engaged in international and domestic business ventures. Faculty members included Claudio Cocuzza, an Italian attorney specializing in commercial matters; Nancy Eller, an attorney who specializes in international corporate transactions at the London office of New York-based White & Case; and Linda Wells, Director of the CLDP. Mr. Bassett moderated the program.

[5]Additionally, Aleksandra Braginski of USAID/Washington and Dede Blane of USAID/Tirana attended portions of the workshop.

The structure of the workshop ultimately achieved the goal of ongoing student participation, interaction and, apparently, understanding. While the written materials were fairly voluminous, and addressed a wide variety of sophisticated legal and business issues, to avoid overwhelming the participants some of these issues were not covered in class. Also, during the workshop sessions, faculty members distilled the written information into simple, straightforward, and clear presentations, emphasizing key points on a "flip chart" displayed on an easel. Not only was class size conducive to active involvement, but lecturing was kept to a minimum, in favor of more inter-active teaching methods. This format encouraged questions and answers by, and discussion with, class members.

Class involvement was highest during the last several days of the workshop, when the students "acted out" the joint venture case study that had been developed by program chair David Meyer. The study, which was distributed on the first day of the workshop, was comprised of a factual scenario and various related documents (including a sample joint venture agreement). After reviewing the study, workshop participants were divided into two groups, each representing one of the negotiating parties described in the case study, and in animated sessions, they "negotiated" a sample joint venture agreement.

Discussions with the participants during and after the workshop indicated that they were pleased with both the content and structure of the program. In this regard, the level of enthusiasm and degree of interest in the workshop was evidenced by the high ratio of participants who made the effort -- during the work day -- to attend virtually the entire program. The evaluation forms that sought participants' views also reflected the participants' unanimous view that the subject of the workshop was very well-chosen, and their sense of having learned a substantial amount about how to negotiate and structure international joint ventures. The evaluations also reflected participants' general satisfaction with the level of difficulty and detail at which the workshop was conducted; its structure and organization; the written materials; and the faculty members, as well as their interest in and enthusiasm for additional technical legal assistance.

The workshop impacted the participants in a variety of significant, identifiable ways. First, in terms of substance, the program and accompanying materials fulfilled the organizers' goals of providing the participants with practical, usable information and skills.[6] Perhaps most importantly, however, by engaging the participants in role-playing negotiating sessions, the workshop allowed them to apply both the substantive knowledge and negotiating skills that the workshop sought to teach, and to gain confidence in their own abilities. The program participants' newly-gained substantive knowledge and confidence will serve them well as they

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[6]Specifically: (1) the basic knowledge and written material necessary to enable participants to approach an international joint venture in an informed, methodical, and analytical manner, and to identify key legal and business issues raised by such a transaction; (2) a familiarity with basic negotiating concepts, which are key to enabling the Albanians to bargain on a more equal footing with their foreign counterparts.

deal increasingly with the outside world.

4. Analysis of Albanian Commercial Law Reform Efforts

As noted in CEELI's last report, CEELI's work in Albania has been challenging. While not as severe as during the early days of CEELI's on-ground work, the under-developed state of the country's infrastructure (including unreliable telephone/fax service) continues to pose logistical problems. Additionally, the difficulty of obtaining accurate, complete and/or timely information is a major obstacle for Western assistance providers. The idea fostered under the communist regime, that knowledge is power, and is not to be freely shared with others, continues to hold sway. The lack of coordination (or even communication) between government ministries also makes it difficult to know who is actually responsible for a particular project.

In any event, despite the fact that Albanian President Sali Berisha declared 1993 "The Year of Privatization," in recognition of the country's need to develop a functioning economy and reduce the currently high unemployment rate, a tremendous amount remains to be done in terms of commercial law reform. Unfortunately, however, changes last fall in the heads of some of the ministries responsible for commercial law reforms (ministries with which CEELI has worked) seem to have virtually halted, during the last several months of the year, measurable progress on such reforms.[7] Accordingly, Albania continues to need assistance on a broad spectrum of issues, including

-- background education about the basics of a market economy system and the legal infrastructure for such a system

-- drafting legislation (in this regard, one of the country's most pressing needs is for a new commercial code, that will help establish the legal infrastructure referenced above, needed to enable the market economy system to function)

-- implementing legislation that has been enacted

-- publishing and disseminating (to government officials, courts, and private practitioners) new laws

-- training government and private attorneys, as well as law students, in commercial law matters

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[7]In a New Year's Message to his fellow Albanians, President Berisha noted that despite "our great and incontestable achievements during 1993 we are aware of the great problems and difficulties lying in store for 1994. Priority will be given to the reduction of unemployment, the construction of infrastructure, the attraction of investors, privatization of mid and large-sized enterprises and establishment of a voucher market." Illyria, January 6 - 8, 1994, at 6.

CEELI's commercial law mission in Albania is still young. Nonetheless, CEELI has been able to provide needed, substantive assistance on a variety of matters over the past six months. The impacts of the training workshop are described above. Additionally, Mr. Bassett's in-country work has had the following impacts:

-- Comments on draft privatization and intellectual property legislation should result in improvements to that legislation

-- Assistance and counseling to Trade Ministry officials should result in improvements to the administration of the EC/PHARE SME program

-- Assistance to Trade Ministry officials in connection with incoming foreign investment proposals has transmitted skills that will help to ensure that Albanian officials are better-equipped to perform "due diligence" on such proposals, and to more effectively inter-face with potential foreign investors

-- Provision of written materials regarding the commercial law infrastructures in Western states will help to ensure that the drafters of the contemplated commercial code are better equipped for that important task

-- Assistance in connection with Albpetrol's negotiations with an outside investor helps to ensure that any contracts entered into by Albpetrol provide the Albanian company equitable terms and treatment, and has provided training to Albanian officials regarding the negotiation of a contract with a Western investor

-- Guidance to the Albanian team negotiating the proposed Bilateral Investment Treaty with the U.S. should ensure that the Albanians enter into negotiations with a better understanding of the issues raised in the Treaty

Nonetheless, clearly much more assistance is needed. Most particularly, as noted above, interest has been expressed in CEELI assistance with the commercial code drafting project. CEELI regards this as an urgent priority, and hopes to become more deeply involved with this project in 1994.[8]

[8]CEELI understands that a German government assistance program (GTZ) also plans to assist the Albanians with the commercial code. CEELI will seek to coordinate its efforts with those of the German group.

BULGARIA

1. Resident Liaison and Legal Specialist Activity

In June 1993, Linda Foreman, CEELI's first Commercial Law liaison, was sent to Sofia, Bulgaria. Prior to Ms. Foreman's arrival, Harlan Pomeroy was serving as CEELI's rule of law and commercial law liaison. Mr. Pomeroy returned to the United States at the beginning of September 1994. In January 1994, Ms. Foreman returned to private practice in the United States and was replaced by Mark Beesley, a litigator from New York.

During her tenure, Ms. Foreman provided the Legislative Committee of the National Assembly with technical information relating to the draft Bankruptcy Act and Protective Concordat (reorganization) provisions of the Bankruptcy Act, as well as certain tax issues. Ms. Foreman provided technical advice on the pending draft Concordat provisions of the bankruptcy act. On November 30, 1993, Ms. Foreman addressed a meeting of the Legislative Committee of the National Assembly to discuss bankruptcy issues and submitted additional questions to a group of American experts for written comments that were submitted later.

Ms. Foreman also provided the Council of Ministers with informal comments on the Council's draft law on the regulation of civil servants. She reviewed, at the Council's request, its proposal for a National Legal Information System, and has arranged for CEELI to assist the Council on substantive content-related issues for this system. The Council of Ministers hopes to begin implementing this system during this year. It is envisioned that the system will be computerized and made available to all branches of government, law schools and, eventually, individuals. The primary funding for this project is from the World Bank.

Ms. Foreman been working with Bulgarian bankers and the Bankers' Association on banking law reform and education, and provided information on banking and credit/debit card regulation to BORICA, the Bulgarian National Bank's credit card subsidiary. The president of BORICA was favorably impressed with CEELI's response to his request and has agreed to involve CEELI in reviewing the first draft of the ensuing regulations. Ms. Foreman also met with Ivan Pantchev, Head Secretary of the Bulgarian Association of Commercial Banks and other members of the Association. This Association has recently formed a Legal Committee which will identify the laws and regulations necessary for banks to operate in Bulgaria. This Legal Committee will also work with members of parliament to attempt to get these necessary laws enacted. Mr. Pantchev has asked for CEELI to work with this Legal Committee on future projects.

Ms. Foreman also responded to a request from Dr. Emilia Drumeva, Head of the Legal Department of the National Assembly, for laws or regulations from other countries concerning tourism, to assist her in preparing a report to the National Assembly on this issue, which has become very controversial.

On November 20, 1993, Ms. Foreman spoke at an Energy Legislator and Policy Symposium, pursuant to a request from Kiril Velev, Deputy Minister of Trade. The symposium was focused upon Bulgaria's energy policy and legislation within the world market. Ms. Foreman spoke about the role of competition in the United States energy market.

Pursuant to a request from Nicholas Afonsky, director of trade and services with International Executive Services Corps, Ms. Foreman also reviewed a draft report prepared by a U.S. franchising expert on franchising possibilities in Bulgaria, which is intended to bring U.S. companies to Bulgaria.

In addition, CEELI and the Ministry of Foreign Affairs have entered into an arrangement whereby CEELI will facilitate translation of international treaties ratified by Bulgaria and make those translations available to the public. The Ministry of Foreign Affairs would like to create an independent library of multilateral and bilateral treaties ratified by Bulgaria. The translated treaties will be published in the State Gazette (the Bulgarian official reporting service).

Due to meetings with the Secretary General of the National Assembly, Mr. Kotchev, his Deputy and the Head of the Library, CEELI has entered into a cooperative arrangement whereby Mr. Kotchev agreed to provide monthly the updated agenda of items presented to the National Assembly and the committees, as well as the position statements of the various parties on those issues. CEELI has agreed to furnish the library with a complete set of its assessments and concept papers.

Ms. Foreman provided assistance to the Peace Corps representative in Vidin by reviewing a draft contract that was being negotiated between the city and a cable television provider. The city had no lawyer representing it in the negotiations. On November 5, 1993, Ms. Foreman also assisted the Business Peace Corps by participating in its course for bankers in Plovdiv. Ms. Foreman discussed the differences between American and Bulgarian law with respect to loan documentation, third party guarantees and subordinated collateral.

Ms. Foreman attended the Plovdiv International Business Fair (September 27-28, 1993), which has become one of the most highly attended business fairs in all of Central and Eastern Europe.

In addition, Ms. Foreman worked with James Wooster, U. S. Treasury Department, in exchanging ideas for Mr. Wooster's program to bring Bulgarian tax administrators and enforcers, as well as judges, to Washington, D.C. for training.

2. Draft Law Assessments and Concept Papers

At the request of Andrei Delchev, Head of the Legal Department of the Council of Ministers, CEELI prepared an assessment of the draft regulation of state-owned enterprises.

In October 1992, CEELI prepared a concept paper on Securities Regulation for the

Government of Bulgaria. As a result, the Bulgarian Ambassador to the United States, Mr. Pishev, requested CEELI's assistance in reviewing certain draft securities laws--one prepared under the auspices for the Council of Ministers by a World Bank Consultant and one prepared by the Securities and Exchange Commission for a non-profit Bulgarian entity, the Institute for Market Economics. CEELI's Securities Law Working Group undertook to review these drafts to determine whether they can be consolidated.

At the request of the Ministry of Trade, CEELI prepared an assessment of draft laws on commodities exchanges, chambers of commerce, and domestic trade regulation. The draft law on the chambers of trade and industry establishes a state-run Chamber of Trade and Industry to "protect the interests of entrepreneurs." The Chamber is intended to foster new industries, educate persons wishing to become entrepreneurs, and keep the executive branch informed of developments in the economy. Membership in the Chamber is compulsory for all persons defined as "merchants." The Draft Law on the Commodity Exchange permits the establishment and organization of commodity exchanges in Bulgaria. Municipal authorities are empowered to open exchanges in their region, but their decisions are subject to a veto from the national government. The law also allows the national government to appoint an officer to regulate conduct in each local commodity exchange and to fine exchange members who do not "abide by the commonly accepted rules of order." The draft Law on Domestic Trade Regulation regulates the conduct of retail and wholesale traders in the Bulgarian market. Portions of the law function in a fashion similar to the American Uniform Commercial Code, defining a sale of goods. Consumers are protected by the law's labelling requirements for certain commodities. Mr. Todor Nedev of the Ministry Trade expressed his pleasure at receiving this assessment, especially the article comparing various countries' commodities exchange acts. Mr. Nedev has promised to keep CEELI involved with the progress of these laws. Mr. Nedev will circulate the comments prepared by CEELI and will provide CEELI with the revised laws and provide an opportunity to comment on the new drafts. In early November 1993, Mr. Nedev informed CEELI that work on these draft laws had stopped due to other more pressing issues that have arisen. CEELI will continue to monitor this project.

Due to CEELI's assessment of the draft Waste Management Act, the Council of Ministers revised the draft law. CEELI is currently monitoring the new draft law and will provide assistance as requested.

CEELI has received a request from Dr. Ilko Eskenazi, Member of Parliament, to prepare a concept paper on the use of trade barriers and tariffs as effective international trade policy. CEELI had been asked to prepare an assessment of a draft law on international trade regulation; however, CEELI has been informed by the Foreign Minister of Trade that the drafting of this law has been delayed.

3. Training Workshops

CEELI held no training workshops in Bulgaria during the current reporting period. CEELI's liaison, however, cooperated with the International Development Law Institute (IDLI)

in hosting a workshop held in Varna (September 13-17, 1993) on issues titled "How to Buy a Business."

4. Technical Legal Assistance Workshops

On October 29, 1993, CEELI held an informal workshop at the Center for the Study of Democracy on "Intellectual Property and Computer Software." The panelists included Petya Thocarova, a Bulgarian copyright specialist, and Roy Freed, an American lawyer.

Ms. Foreman has been working with Kiril Velev, Deputy Minister of Trade to fulfill the Ministry's request for a technical assistance workshop on COCOM issues. The Department of Commerce is awaiting a formal request from the Bulgarian Ministry of Trade to proceed with the workshop.

5. Commercial Law Center

The Commercial Law Center's legal library continues to grow. The Commercial Law Center has received legal textbooks through the efforts of William Meyer, former liaison to Bulgaria, and the Commercial Law Development Program of the Department of Commerce.

The Center for the Study of Democracy is undertaking a study to reorganize its operations and to utilize more effectively its Bulgarian lawyers and the CEELI liaisons. CEELI is working closely with the Center on this assessment and transformation. The new organizational structure will be implemented in the spring of 1994.

6. Analysis of Bulgarian Commercial Law Reform Efforts

--The political stalemate in Bulgaria has slowed down tremendously the pace of legal reform in Bulgaria. CEELI has proceeded with its legislative reform efforts despite this stalemate. CEELI's new commercial law liaison will focus upon long-term development projects for CEELI's activities. For example, as a result of CEELI's on-ground experience, CEELI has identified judicial reform as a priority area. In this vein, CEELI recognizes the dire need for commercial training of judges. CEELI hopes to coordinate its efforts in this area with the Ministry of Justice. In addition to the training of judges, CEELI has also identified the need to train lawyers in commercial law subjects. Accordingly, CEELI has planned a technical legal assistance workshop on leasing issues to be held in the spring of 1994.

--Ms. Foreman's work over the past six months demonstrates the tremendous need for banking reform. On December 20, 1993, the National Assembly passed the Settlement of Non-Performing Loans Act which provide that the Bulgarian Treasury will assume the obligations of approximately 90,000 lev for overdue loans contracted by Bulgarian banks before 1990. In return, the government will issue long-term, freely negotiable bonds to the commercial banks in exchange for the outstanding loans. The intended goal is to avoid bank insolvencies so as to

avoid a major financial crises--assuming the Bankruptcy Act is finally passed. CEELI, through its new commercial liaison, will continue to monitor banking issues in Bulgaria and provide assistance as requested. Specifically, CEELI will continue to work with Mr. Pantchev, Head Secretary of the Bulgarian Association of Commercial Banks and the new Legal Committee established within the Association.

--As a result of the collaborative efforts between CEELI and the Mr. Kotchev, Secretary General of the National Assembly, CEELI was informed by Mr. Kotchev that the following are commercial law areas in need of technical assistance:

(1) Commercial law training for members of parliament and staff;

(2) legislative drafting workshops for both members of parliament and staff;

(3) assistance on personnel issues and staff organization; and

(4) assistance on tracking legislation.

--Pursuant to requests received by USAID in country, Ms. Foreman identified (based primarily upon her trips to Varna) local government issues as being an important area for assistance. In her opinion, many of the serious problems facing Varna were economic. The national government has not assisted the cities in the major projects confronting them, such as, building a waste recycling system. Ms. Foreman identified the following areas in which CEELI could be of assistance:

(1) Legal issues concerning the election and organization of the City Council, currently consisting of 65 members elected on a block slate basis resulting in incompetent members being elected.

(2) Issues concerning privatization of municipal enterprises which the Varna City Council has been slow to implement because the Privatization Act is unclear and also half of the proceeds must return to the national rather than city budget.

(3) Issues concerning clarifying the Local Government Act. For example the law is unclear with respect to even the term "municipality" which has created confusion regarding the proper allocation of functions.

LITHUANIA

1. Resident Liaison and Legal Specialist Activities

By July 1993, CEELI Liaison, John Zerr had established a very active program promoting commercial law reform in Lithuania. The programs and projects that he established and coordinated, along with those coordinated by his successor John Corrigan, continue to be well received in Lithuania, and have had an undeniably positive impact.

The CEELI Liaison is based at the Commercial Law Center/Komercines Teises Centras ("CLC"), a Lithuanian Non-governmental Organization formed by CEELI, and with whom CEELI has a strong affiliation. The CEELI liaisons, John Zerr and John Corrigan, work closely with the CLC staff to implement CEELI projects, and provide "institution building" assistance to the CLC to help create a sustainable Non-governmental Organization. The CLC, in addition to providing technical support for CEELI, works with various legal assistance providers and other members of the Lithuanian legal community to coordinate and implement workshops throughout Lithuania. These organizations include the Lithuanian Lawyers Association, the International Development Law Institute ("IDLI"), and the U.S. Department of Commerce.

The following represents some of CEELI's major commercial law programs and projects during the reporting period.

Following John Zerr's example, John Corrigan continues to work closely with the Lithuanian Lawyer's Association ("LLA"). In addition to regularly attending meetings, and providing materials and information, as requested, in mid-October, Mr. Corrigan participated in the LLA's Conference on the Protection of Private Property Rights, also supported by the U.S. Department of Commerce. Mr. Corrigan delivered a presentation on intellectual property. Also, as a result of CEELI's continued support, the LLA has progressed with in-house lectures on various topics of interest to the legal community. Finally, Mr. Corrigan provided assistance to the LLA in its attempt to develop a foundation structure in concert with the Open Society Fund for Lithuania ("OSFL"), a SOROS organization.

Presently, CEELI Commercial Law Liaison, John Corrigan is assisting the Ministry of Finance. Mr. Corrigan has spent a significant portion of his time assisting the State Debt Management Division of the Ministry with guarantee agreements involving the EBRD and in aspects of the preparation of various G24 (IMF) loan negotiations. In a particular example of his work, the EBRD asked the Republic to guarantee the loan agreement with Lietuvos Telekomas in the amount of ECU 31,000,000. Mr. Corrigan reviewed the guarantee and provided modifications. Mr. Corrigan also advised the borrower, Lietuvos Telekomas' attorney in the matter. Mr. Corrigan has been asked by the Deputy Minister to accompany him to London for the negotiations. Moreover, John Corrigan is providing on-the-job training to an inexperienced lawyer recently hired by the Ministry.

CEELI has also previously provided assistance to the Ministry of Finance from May to August 1993, through CEELI Legal Specialist, Ms. Emily Altman. Ms. Altman assisted the State Debt Management Division of the Ministry in the preparation of various G24 (IMF) loan negotiations, compliance with the World Bank loan, and assistance with other international lending organizations.

During her tenure at the Ministry, Ms. Altman worked closely with the head of the Debt Management Division, Ms. Ruta Skyriene. Ms. Altman worked on the Ministry's review of four G-24 loan agreements (Sweden, Finland, Norway and Austria) as well as a review of a proposed Canadian Export Development Corporation loan agreement. In addition, she helped the Ministry to prepare and negotiate an amendment to the Japan Eximbank loan agreement, and reviewed with the European Bank for Reconstruction and Development ("EBRD") the co-financing offers from five Western European export credit agencies-- Denmark, Germany, Switzerland, Finland, and Norway.

Aside from working on particular loan transactions, Ms. Altman spent a significant amount of time in trying to establish a legal regime in Lithuania governing the incurrence of sovereign debt. At Ms. Altman's insistence, the Ministry drafted a parliamentary authorization for all of the prospective G-24 loans in order to avoid the need for an individual preliminary presentation to the Parliament for each agreement. The resolution was passed by the Parliament.

Ms. Altman worked through all of the foreign loan agreements which had been received by the Ministry to date, and in the process was able to teach the members of the Debt Management Division a great deal about the structure of loan agreements and the issues that should be focused upon when negotiating them. In addition, the Minister and his staff were made extremely sensitive to the value of legal advice to their work.[9]

At the Ministry of Foreign Affairs, CEELI placed a legal specialist, Professor Kenneth Vandevelde, to assist in the area of bilateral investment treaties ("BIT"). From June to August 1993, Professor Vandevelde worked with the Ministry, despite having to overcome political turmoil within the Ministry. He used his time there extremely productively in analyzing nine BITs concluded by Lithuania prior to his arrival, and thirteen BITs proposed for negotiation, revising a model investment treaty prepared by the Ministry, preparing the Lithuanians for negotiation of a BIT with the United States and assisting during the negotiations, and in developing a negotiating manual for bilateral investment treaties.[10] John Corrigan maintains an on-going assessment of the political stability of the Ministry in order to determine whether CEELI will place another specialist.

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[9]A copy of Emily Altman's final report is attached as Appendix 3.

[10]A copy of the manual, which is similar in content and scope to the manual used by the United States, was presented to Prime Minister Slezevicius as Appendix 4.

From October to December 1993, CEELI placed Ms. Arlene Elgart-Mirsky as Legal Specialist on Bankruptcy Issues at the Ministry of Economics. Sent in cooperation and coordination with the World Bank, Ms. Elgart-Mirsky worked closely with the head of the Ministry's bankruptcy division, Juozas Joksas, on matters relating to bankruptcy, reorganization, and liquidation of public and private enterprises. In the three months of her tenure, Ms. Elgart-Mirsky helped to prepare and propose a number of amendments to the existing bankruptcy lien laws, which were submitted to the Seimas (the Lithuanian Parliament).[11]

In order to accomplish the goal of reforming the bankruptcy and lien laws Ms. Elgart-Mirsky held extensive discussions with representatives from the banking industry, the Seimas, EC PHARE, OSFL, IMF, and World Bank missions. These discussions included changes that should be implemented with respect to the other commercial laws in Lithuania. In addition, Ms. Elgart-Mirsky held many in-depth discussions with Mr. Joksas and provided him with copies of current Lithuanian laws on criminal law and procedure, civil procedure, and administrative law, for his review in conjunction with possible amendments to the Lithuanian bankruptcy laws. She also provided copies of U.S. bankruptcy forms to aid the Division in developing Lithuanian forms. In addition she prepared a summary of American bankruptcy laws as a quick reference work.

In an effort to demonstrate the necessity of taking an inter-agency approach to the task of reforming the bankruptcy and lien laws, Ms. Elgart-Mirsky established an Advisory Committee on Bankruptcy and Lien Laws. This Advisory Committee, composed of lawyers from the various relevant ministries and banks, and judges from the Supreme Court, is tasked with the review and clarification of other Lithuanian laws to make them compatible with the bankruptcy and lien laws, preparation of a bankruptcy procedural code, and preparation of amendments to and implementation of the Lithuanian Lien Law.

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[11] Examples of amendments include:

- Shortening or eliminating the language requiring a three month waiting period for initiating bankruptcies using the cash flow test. (Forcing creditors to wait three months to commence a bankruptcy significantly diminishes the chance for a successful reorganization).

- In the case of an extra-judicial bankruptcy procedure, the language is changed to reflect that **either** cash flow insolvency or balance sheet insolvency is sufficient to commence the procedure.

- In the case of the Lien Law that prohibited the mortgaging of state property, the language is changed to reflect that "property, **including, without limitation, state property,** may be mortgaged."

In addition to her hectic schedule in Lithuania, Ms. Elgart-Mirsky was asked to participate in the IRIS Judicial Conference in Poland. Ms. Elgart-Mirsky arranged for Mr. Joksas to attend. During the conference, she delivered a series of lectures and participated in workshops on bankruptcy and commercial law issues for more than sixty civil judges. This program resulted in the creation of the first Polish judges organization, despite opposition from the Ministry of Justice.

Ms. Elgart-Mirsky accomplished a great deal during her tenure, but the reform and implementation of all the bankruptcy laws is an on-going project. At least two state owned companies are undergoing bankruptcy. CEELI plans to appoint a successor by the end of February 1994. Meanwhile, the Ministry has requested that the World Bank send Ms. Elgart-Mirsky back to Lithuania for consultations.

From January through September 1993, CEELI maintained a legal specialist in judicial reform, Bill Walters. Mr. Walters met regularly with the Head of Courts of the Ministry of Justice and organized a judicial ethics workshop for Lithuanian Judges in the five judicial districts in the country. This workshop, which combined Danish, German and American speakers, presented in the cities of Vilnius, Panevezys, Kaunas, and Klaipeda, with a high level of participation by the attending Lithuanian judges in the last two weeks of May. Also, a working group to address the subject of judicial education was convened at the Ministry, consisting of representatives of the Constitutional Court, the Supreme Court, and the Law Faculty, as well as members of the Ministry of Justice.

The end of September saw an historical event in Vilnius-- the first Baltic Judicial Conference. This conference, held on September 23-24, 1993, sponsored by the Supreme Court, coordinated by CEELI Specialist Bill Walters, and underwritten by the United Nations Development Program, brought together representatives of the judiciaries of the three Baltic countries to discuss common issues and possible solutions. The topics discussed included judicial independence, court administration, judgement enforcement, and commercial law education issues for the judiciary. The conference was successful, and the judges agreed to meet again next year.

In addition to the remarkable work done by the legal specialists, CEELI maintains collaborative efforts with other assistance providers in Lithuania. Through John Corrigan and some of the legal specialists, CEELI continues a close collaborative relationship with the OSFL which began under the former liaison John Zerr. In addition to the foundation project involving the LLA, John Corrigan is collaborating with the OSFL on a "Lien Law Project." The OSFL recently commissioned a credit union feasibility study in Lithuania. The study concluded that the establishment of a credit union system in Lithuania will be severely hindered by the land law's excessive restrictions on mortgaging property and by the lack of funding for the Central Mortgage Registry. CEELI intends to work with OSFL in preparing a "streamlined" land recordation system. CEELI hopes to identify a legal specialist for this purpose.

Another important project is the "Seimas Printing Project," in which Mr. Corrigan and Ms. Arlene Elgart-Mirsky, CEELI Legal Specialist in Bankruptcy, approached the OSFL to fund the acquisition of printing equipment for the Seimas, which in turn would enable the Seimas to print all of Lithuania's laws, regulations, and even judicial opinions. These laws and opinions would then be distributed to the more than 300 courthouses and 100 public libraries in Lithuania free of charge. Presently, the judges receive little or no information on new or existing laws and are forced to either rely upon reports of new laws contained in the press (many judges have extensive "clippings" files) or to purchase copies of those laws that are available to the public out of their own money.

In another example of linkage, the U.S. Department of Commerce Commercial Law Development Program ("CLDP") sponsored a three day workshop on Project Finance in Vilnius in October. John Corrigan and the staff of the Commercial Law Center played a crucial supporting role in managing the logistics and translating the workshop material. Former CEELI Legal Specialist to the Ministry of Finance, Emily Altman returned to Vilnius to participate in the workshop.

The Commercial Law Center also utilized its growing expertise and experience gained from CEELI projects to coordinate the presentation of a workshop on Contracts in the International Sale of Goods, sponsored by the International Development Law Institute.

2. Draft Law Assessments

CEELI continues to collaborate with the Legal Department of the Seimas by providing assessments of various draft legislation as requested. In the reporting period, CEELI completed the following assessments of draft commercial law legislation:

- Draft Charter for the Vilnius International Commercial Arbitral Tribunal
- Draft Law on Foreign Investments
  (Actually two different versions of the same law: one from the UNDP and the other from the Lithuanian Ministry of Economics.)

3. Training Workshops

Aside from the workshops presented by CLDP and IDLI in which CEELI personnel participated, CEELI did not present a workshop during the reporting period. However, CEELI is currently preparing a training workshop on "Letters of Credit and Shipping Documents" to be held in the first week of March 1994, for two days each in Vilnius and Klaipeda.

4. Analysis of Lithuanian Commercial Law Reform Efforts

Despite the initial fears that the government of President Brazauskas would have a significant negative impact on the pace of legal reform in Lithuania, the impact on the CEELI program has not been as anticipated. In fact, the demand for assistance and the utilization of that assistance remains great. CEELI is bounded then, not by the dictates of certain government officials who may want to slow the pace of legal reform, but by the constraints of its own funding.

The success of CEELI programs in Lithuania depends to a great extent on what may be termed vertical and horizontal integration. CEELI provides assistance in a vertically integrated manner in which the various components of CEELI are focused on an area. An example is CEELI's work with the Ministry of Finance where the initial contact was made by CEELI liaison John Zerr, who provided discrete advice and determined that the need existed for a legal specialist. That position was then filled by Emily Altman. Follow-up assistance and on-the-job training is currently being provided by liaison John Corrigan. Horizontal integration, on the other hand, involves the establishment of networks and linkages between sources of assistance and between Lithuanian institutions such as ministries, the legislature, and the courts. CEELI is a natural catalyst for such information-sharing.

In its programs, CEELI has sought to utilize both vertical and horizontal integration to achieve the goal of creating an enabling environment in which the Lithuanians will continue the pursuit of legal reform. This is accomplished by empowering indigenous organizations to provide assistance in the area of legal reform, and training individuals who in turn will be able to train others.

CEELI's relationship with the Commercial Law Center ("CLC") provides an example of empowering indigenous organizations to provide assistance in the area of legal reform. As a result of CEELI's continued support, and the presence of the CEELI Liaison, the CLC has established a network of affiliates and a wealth of experience. The CLC has become a center for legal reform activity in Vilnius, assisting lawyers from the LLA, Association of In-House Counsel, judges from the Supreme Court and Constitutional Court, EC PHARE, OSFL, U.S. Department of Treasury, and U.S. Department of Commerce to name a few. As noted above, the CLC has coordinated workshops for both the U.S. Department of Commerce and IDLI. In addition, CEELI has helped the CLC obtain funding from other aid organizations including the OSFL, IDLI, and the U.S. Department of Commerce (which also provided funding for a research collection of commercial law material), and worked to improve the organizational structure of the CLC.

CEELI has also impacted the Ministry of Finance positively. As a result of John and Emily's presence and close working relationship with the State Debt Management Division of the Ministry of Finance, the Chief of the division alerted John Corrigan when confronted with a complex transaction which appeared to be officially sanctioned, yet presented some irregularities. The "deal" was not closed because it was apparently fraudulent. This episode

is an example of the training which provided the ability to detect the fraud, and evidence that the cardinal rule of transactions, that the lawyer should be involved early, had been learned.

CEELI continues to create linkages with other assistance providers in Lithuania, as evidenced by the collaboration with the OSFL and the Commerce Department. These linkages are beneficial to the Lithuanians as the Seimas Printing Project illustrates. CEELI negotiated a deal whereby the Seimas would receive funding for the printing equipment from OSFL and/or EC PHARE on the condition that the laws printed by that equipment be available for judges and lawyers without charge. As a result, Judges will have the foundation for the creation of law libraries in their court houses and lawyers and interested citizens will have free access to their laws in the Lithuanian public libraries.

CEELI has also emphasized the necessity and efficiency of communication and collaboration among the various Lithuanian entities that are impacted by particular legislation or a lack thereof. The inter-agency approach instituted by Ms. Elgart-Mirsky in the establishment of the Advisory Committee on Bankruptcy and Lien Laws, highlights the interdependent nature of the bankruptcy laws, and indeed all laws in Lithuania. The Ministry of Economics is now more cognizant of the fact that there are many other laws that impact upon the laws that they draft. Much of the success that Ms. Elgart-Mirsky had is a result of creating networks of interested groups and individuals. With the Advisory Committee, she also created a structure that remains behind her and by which the Ministry may address future problems.

In addition, her participation in the IRIS Judicial Conference with Mr. Joksas resulted in exposure for Mr. Joksas to bankruptcy problems faced by the Poles and how they are attempting to solve them. It is instructive, therefore, that through her close working relationship with Mr. Joksas, Ms. Elgart-Mirsky was training an individual who could in turn train other Lithuanians to navigate the rocky shoals of bankruptcy.

Finally, CEELI's presence at the Ministry of Foreign Affairs, proved to be quite beneficial. The impact of a negotiating manual of the kind that was developed by Professor Vandevelde is self-evident. The manual is being used by those in the Ministry who worked directly with Professor Vandevelde, and also to teach particular techniques to those who came after his departure. It represents a lasting improvement upon which the Lithuanians can build. In fact, the new First Secretary at the Lithuanian Embassy in Washington, Sigute Jakstonyte, worked closely with Professor Vandevelde and reports that the Ministry benefitted greatly from Professor Vandevelde's tenure.

Thus, it may be safe to conclude that CEELI continues to have a very active presence in Lithuania, despite the presence in government of officials who are some what adverse to reform. However, for each of the projects with which we are involved there are many more with which we cannot assist. By creating networks and linkages of other assistance providers, and empowering indigenous assistance providers, CEELI has positively impacted the area of legal reform to a greater degree than that allowed by the constraints of funding.

POLAND

1. Resident Liaison and Legal Specialist Activities

In Warsaw, Vera Hartford, CEELI's Rule of Law Liaison in Poland during the period May through August, assumed the duties of Robert Stark, who finished a one year tour as CEELI's Commercial Law Liaison in October. Both Stark and Hartford have been instrumental in securing the unprecedented cooperation of three major legal organizations (the Polish Lawyer's Association, the Polish Bar Association, and the Chamber of Legal Advisors) to organize and operate a CEELI-sponsored "Commercial Law Center" in Warsaw.

In Krakow, Al Kwitnieski replaced Roy Gordet in September as CEELI's Commercial Law Liaison there. Kwitnieski, who recently retired from over 30 years service as a government patent attorney, will benefit from the groundwork of Roy Gordet, CEELI's first liaison to Krakow who in February opened CEELI's Krakow office. Kwitnieski is currently developing a series of legal lecture luncheons with the participation of the local Chamber of Legal Advisors and the Institute of Inventiveness, a group of intellectual property experts whose work is known throughout Eastern Europe. During his short time in Poland, Kwitnieski has already given lectures on negotiations and patent law, and has been invited to attend several seminars regarding intellectual property law in Poland.

In Poznan, CEELI Legal Specialist Daniel Singer finished a four month tour in September with the Agency for State-Owned Agricultural Lands, the entity responsible for the inventory of public agricultural lands in the Poznan region. The highlight of the tour included a well-attended workshop, conceived and produced by Singer and the Agency, which publicized and discussed the availability of $500 million in World Bank housing funds and the potential options for developing over 835 acres of local land. Participants included the Governor of the Poznan region, the President of Poznan, representatives from Polish banks, and representatives from various international organizations which provide expertise and funding for the Polish housing sector. The workshop (a) brought together private and governmental organizations involved in all aspects of housing development, (b) generated networking and ideas for future housing development, and (c) publicized details of funding options not widely promoted in Poznan. As a result of Singer's workshop, an Executive Committee was elected to continue development efforts, and the Committee held its first meeting on December 15. CEELI will assist and monitor the Committee's progress.

The Ministry of Finance requested during the current reporting period that CEELI provide a specialist to assist Ministry lawyers in dealing with international loan agreements. Until a person with the proper expertise can be found, CEELI's Commercial Law Liaison has been providing as-needed assistance to the Ministry on related topics. In November, at the request of the Ministry, CEELI Liaison Hartford accompanied officials to the negotiations for a $100 million EBRD loan and provided comments on negotiating techniques. In addition, through the aid of Hartford and written materials secured by CEELI from a U.S. expert in

sovereign loan agreements, Ministry lawyers have increased their understanding and awareness of certain clauses commonly found within agreements. Ministry officials are now better able to negotiate and assess then terms of future agreements.

2. Draft Law Assessments and Concept Papers

CEELI provided no formal written comments on draft commercial legislation during the current reporting period, due primarily to the collapse of Poland's ruling government coalition in May and the absence of a succeeding coalition until November.

3. Training Workshops

CEELI held no training workshops in Poland during the current reporting period. However, CEELI sent bankruptcy expert Arlene Mirsky to Warsaw in November to teach at a bankruptcy training seminar for judges sponsored by IRIS. Ms. Mirsky delivered a series of lectures for more than 60 Polish judges, and her presentation received complimentary coverage by the Polish press. Subsequent to the workshop, Ms. Mirsky has maintained contact with several of judges, providing materials as requested. For example, one judge from Lodz has been given copies of an insolvency plan filed in a major U.S. bankruptcy case to assist him in a large Polish insolvency case over which he is currently presiding. CEELI's liaison in Warsaw has planned a follow-up meeting with the Polish judges to ascertain what additional assistance CEELI can provide.

4. Technical Legal Assistance Workshops

On September 21-23, CEELI conducted a workshop on Environmental Issues in Privatization Transactions. Participants included Ruth Greenspan Bell from the Environmental Protection Agency, Alan Birnbaum, Esq., Matthias Heber from the Max Planck Institute's International Environmental Law Working Group, and Catherine Werner from the Resolution Trust Corporation. The audience consisted of lawyers and staff from the Ministry of Privatization's Legal Department and the Ministry of Environment and the active discussions involved issues such as transferring environmental liability to a purchaser, tying environmental obligations to investments, and determining how environmental liabilities affect valuations. Given the successful interaction between the audience and the participants and the subsequent compliments regarding the usefulness and quality of discussion, the workshop participants are considering suggestions to distribute the materials generated at the workshop to other countries, possibly in conjunction with additional interactive sessions.

5. Commercial Law Centers

In Warsaw, CEELI has been preparing for the January opening of the Commercial Law Center, to be located at the centrally-located offices of the Foundation for the Polish Bar. Vera Hartford, CEELI's Commercial Law Liaison in Warsaw, will maintain an office at the Center,

which will serve as a resource center for commercial law materials and be a focal point from which CEELI and the three Polish organizations will provide continuing legal education for Polish lawyers and judges.

After months of negotiations and efforts by CEELI's in-country Commercial Law Liaison to bring the local organizations together, the three groups -- the Foundation for the Polish Bar, the Association of Polish Lawyers and the Regional Chamber of Legal Advisors -- decided to join forces for the first time by creating a new Foundation under Polish law. The Foundation was created specifically to work with CEELI and to open and operate the Warsaw Center. Each of the Polish organizations is represented on the Foundation's governing board.

CEELI has already purchased computer, fax and copying equipment for the new Center, and the Department of Commerce has pledged the purchase of $10,000 worth of legal texts for the project. In addition, the Warsaw Center has been selected as one of two sites in Eastern Europe where books gathered from an upcoming Virginia Bar Association book drive, co-sponsored by CEELI and expected to result in the collection of thousands of volumes of legal books, will be placed. The Polish partners are donating the office space for the Center and will provide access to Polish Commercial Law materials, membership lists, and other useful legal and marketing contacts.

In Krakow, effort was expended during the current reporting period to establish a second Commercial Law Center with the cooperation of the Jagiellonian Law Faculty, the Institute of Inventiveness, the Advocate's Society and the regional Chamber of Legal Advisors. Despite enthusiastic support for the project by these groups, CEELI terminated its efforts in this area after learning in late October that US AID would not be providing funds to continue the operations of this "second" commercial law center.

6. Internship Pilot Project

Five Polish lawyers returned from the United States in late August after spending eight weeks as interns to American law firms. In early August, the interns attended the annual meeting of the American Bar Association in New York. This pilot internship program was developed as a partnership between CEELI and the International Legal Exchange Committee of the ABA's International Law Section. Financial Services Volunteer Corps assisted in funding one of the Polish lawyers, an employee of the Ministry of Privatization.

7. Analysis of Polish Commercial Law Reform Efforts

-- CEELI's primary challenge during the past reporting period was to bring together the three major legal associations located in Warsaw and generate interest among these groups for devising and executing continuing legal education programs and other commercial law reform projects. CEELI viewed this challenge as necessary to providing long-term and effective commercial law assistance in Poland. Our experience in that country has taught us that the

Polish bar is not eager to embrace direct foreign assistance and that legal reform efforts have more impact when they are developed and implemented by Polish lawyers. Furthermore, we feel that long-term prospects for commercial law development are directly proportional to the institutional capacity of local bar groups to train lawyers and conduct commercial law projects.

-- CEELI had also learned from its experience in Poland that the divisiveness of the Polish legal profession sometimes obstructs the acceptance, and thus impact, of commercial law projects. While interest relating to commercial law is generally high among Poland's bar, the legal profession in Poland is a segmented one consisting of advocates, legal advisors, judges, and notaries. Because CEELI knew that these different segments have historically been resistant to cooperating among each other, we began in early 1993 a long-term process of building our relationships with each segment and evaluating the numerous organizations which represent the various interests within the Polish legal profession.

-- CEELI's efforts were rewarded in December when three major legal organizations (representing advocates, legal advisors and judges) joined together to form a Foundation under Polish law for the purpose of participating in CEELI's new Commercial Law Center, as well as other CEELI projects. Thus, during the current reporting period, CEELI overcame a major hurdle to providing wide-reaching and long-term commercial law assistance in Poland: there now exists a vehicle from which CEELI and a large cross-section of the legal profession in Poland can jointly participate in and contribute to future training, legislative, research and information-sharing efforts.

-- The fruits of this collaboration are already evident. Representatives from each Polish organization and from CEELI now meet at least once a week to discuss the Commercial Law Center and prospective projects. These meetings have become an incubator for developing and implementing future work. For example, the participating local organizations, through the Foundation meetings, have already been discussing plans for organizing a legal clinic where organizations and individuals can seek preliminary guidance about Polish or American law. Also, members of the three participating groups will now be available for polling on questions useful to developing CEELI's commercial law plans in Poland (such as determining what legal topics are considered training priorities for 1994).

-- The next reporting period will be a critical time for CEELI's commercial law program in Poland. As of December, enthusiasm about the Center is high among the Polish participants. CEELI must sustain this enthusiasm by initiating one or two substantive and successful projects (e.g. full-scale training workshops) on which the three Polish partners can work together and feel a sense of accomplishment.

-- An important observation: although Poland's economy and commercial laws are quite advanced compared to other Central and Eastern European countries and Polish lawyers have relatively good access to legal materials, CEELI's experience reveals that Polish lawyers, government officials and judges still lack very basic expertise in (and sometimes a very basic understanding of) numerous commercial law topics. As an example, the Ministry of Finance

requested assistance from CEELI in the area of international loan agreements. While working with the Ministry to gain a better understanding of their needs, CEELI's liaison in Warsaw found that the small group of lawyers responsible for negotiating and developing such agreements on behalf of Poland lacked a basic understanding of clauses commonly found in such agreements and could benefit from tutoring on basic principles of negotiating.[12]

-- Given the need for Polish lawyers to absorb even a minimal level of expertise, particularly among government attorneys, CEELI's commercial law efforts must necessarily continue to include direct contact and assistance to government organizations such as the Ministry of Finance, Ministry of Privatization, and the Ministry of Industry and Trade. During the next year, we intend to retain and build upon our direct relationships to government agencies interested in assistance. Although these relationships will continue to be cultivated outside the Commercial Law Center, we anticipate that the Polish participants in the Center will supplement and enhance CEELI's existing government contacts.

[12] In such cases, CEELI's liaison, through CEELI/Washington's access to American experts, can answer pressing questions and quickly address pressing needs while at the same time evaluating whether a specialist should be sent.

APPENDIX 1

Analysis of the Albanian Draft Law on Industrial Property

The American Bar Association
Central and East European Law Initiative
(CEELI)

Analysis of the Albanian
Draft Law on Industrial Property

November 12, 1993

AMERICAN BAR ASSOCIATION
CENTRAL AND EAST EUROPEAN LAW INITIATIVE
(CEELI)

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November 16, 1993

Mr. Sokol Harito and Ms. Diana Luga
Committee of Science and Technology
Tirana, Albania

Dear Mr. Harito and Ms. Luga,

On behalf of the American Bar Association Central and East European Law Initiative (CEELI), we are pleased to provide you with our assessment of the Albanian Draft Law on Industrial Property.

Our analysis represents a compilation of individual comments solicited from a group of intellectual property attorneys with expertise in patent law. Their critiques and this report are a candid review of the draft laws but do not represent an endorsement by CEELI or the ABA of this draft, or any draft, of these laws. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the ABA and, accordingly, should not be construed as representing the policy of the ABA.

The list of experts is in Appendix A. A complete set of their comments is included as Appendix B. A copy of the proposed law is included as Appendix C. Appendix D includes the U.S.-Albania Trade Agreement.

We hope this information will be useful to your efforts. If we may provide you with any additional assistance, please do not hesitate to contact us. We appreciate the opportunity you have given us to work with you on this important matter. We hope there will be future opportunities to work together on this and other matters.

Sincerely,

Mark S. Ellis
Executive Director, CEELI

cc: Homer E. Moyer, Jr., Chairman, CEELI Executive Board
R. William Ide, III, President, ABA
J. Michael McWilliams, ABA Board of Governors Liaison

Summary of Comments on the Albanian Draft Law on Industrial Property

SUMMARY OF COMMENTS ON THE ALBANIAN DRAFT LAW ON INDUSTRIAL PROPERTY

I. INTRODUCTION

The commentators consider the Albanian Draft Law on Industrial Property ("Law") intelligently crafted. They noted a number of areas where the law could be improved and suggested changes both of a general nature and specific to individual articles.

The commentators agreed on three general areas. They felt that the requirements for patent attorneys were too restrictive. They also believed that the Law should address semiconductor chips and trade secrets pursuant to the bilateral United States-Albania trade agreement. Finally, they thought it ill-advised that the Law make reference to morality as a factor in denying patents because this would involve a subjective analysis.

The articles mentioned most frequently in the comments were article 4 (exclusion of certain items from patentability), article 7 (requisites for patentability), article 10 (obligations of employer to employee), article 28 (home use exception to infringement liability), article 43 (statute of limitations), and article 84 (conditions of protection). Many other articles were also commented on, often for their lack of clarity.

II. GENERAL COMMENTS

A. Requirements for Patent Attorneys

Some commentators think that article 106 on patent attorneys should be clarified, and is probably too restrictive. In section 3, it is not clear whether a "patent attorney" must also be a licensed Albanian attorney. If so, the law should so state. More important, section 3(a)(iii) struck the commentators as unduly restrictive. Simply practicing patent law would not appear to require as a matter of law an age of thirty and knowledge of both French and English. This is particularly important in light of the newness of patent law in Albania today.

B. United States-Albania Trade Agreement

The bilateral trade agreement raises a number of issues that might properly be addressed in the Law. Of particular importance are semiconductor chips and trade secrets. Some commentators thought that copyright could also be addressed by the Law, but according to the CEELI liaison in Albania a separate copyright law already exists. That copyright law might protect semiconductors, but this is not clear. It may be easier to include specific protection for semiconductors in this Law. Protection of trade secrets, pursuant to the trade agreement, might also benefit from clearer delineation in the Law.

C. Morality

Article 4 on conditions of patentability states that patents will not be issued for inventions contrary to public morality. Morality is a difficult term to define, and it questionable whether the Patent Office should be involved in determining questions of morality. This topic might better be left to the legislature. As a practical matter as well, enforcement and determination of morality would be administratively difficult.

III. SPECIFIC COMMENTS

Article 4, section 2(c)

This article excludes "programs for computers" from patentability. The consensus of the commentators was that a distinction should be made between programs and processes or devices employing computer programs. The latter should be patentable.

Article 5, section 2

This article might prevent patentability of a new use for a known material because the wording in section 1 describes novelty as existing only if an invention does not form a part of a prior art. It should be made clear that a genuinely new use for a known material can be patented.

Article 7

This article states that an invention is industrially applicable if "... the object of the invention may be manufactured or used in any field of the national economy." The commentators expressed some concern that this sentence, particularly the phrase "national economy," was too narrow a premise for patentability, and might give rise to confusion about what is included within its scope. One commentator suggested substituting "when it provides a consistent commercial benefit."

Article 10

This article provides for equitable remuneration by an employer to an employee for a patent. While at first glance this seems to be a just provision, it disturbed the commentators. Some thought that regular employment compensation would be sufficient. In addition, it should be made clear that an employer receives rights only to patents resulting from work for the employer. Another point raised was that problems may arise if the employer does not file a patent application.

Article 12

One commentator suggested that the application papers include a formal declaration by the applicant that he or she is in fact the originator or creator of the invention.

Article 13

To promote fairness, this article should be modified to allow some leeway and permit the benefit of the original filing date even in cases of minor problems with an application. Two commentators also thought that section 4 should be clarified to indicate unambiguously that it refers to a filing receipt. One commentator suggested that there be some way to appeal a decision made by the Board of Appeal of the Patent Office.

Article 19, section 2

This article should establish a specific time limit instead of merely stating that required documents be provided within a "time limit" of uncertain length.

Article 21

Section 3 states that an application creates provisional patent rights. Section 6, however, allows a court to override these rights until the application process ends. No standards are provided to guide the court in making such a determination.

Article 25, section 3

This article makes reference to "extrajudicial" proceedings. The meaning and perhaps application of this phrase are unclear. If this is more than a translating error, it could prove to be a source of trouble once the Law is enacted.

Article 28

This article was cited by the commentators for its exception to the infringement liability for noncommercial "home use." Opinion was divided about this provision. Some commentators felt that it could present a "home loophole" problem, that is, an unintended method to avoid the underlying intent of the law. Others saw less of a problem but thought it would be a good idea to make it clearer that the noncommercial private use could not be conducted in a manner that would prejudice the economic interests of the patent owner.

Article 30

This article does not make sufficiently clear what date patent rights come into existence.

Article 35

This article appears to permit a joint owner of a patent application to assign an interest but not license without the permission of the co-owner. This appears anomalous because one joint owner can convey the greater right by assignment but grant the lesser license rights. That is, it is counterintuitive that the more important right can be given to another without the co-owner's assent but the less important right requires permission.

Article 42

Adding a reference to the prior use exceptions to infringement noted in Article 31 would improve this article.

Article 43

This article is perhaps too harsh in its strict five year statute of limitations. Under this article the clock begins to run when the infringement begins, even if there was no knowledge on the part of the patent holder. It might be modified to start the clock running either five years after knowledge of infringement, or allow damages up to five years before the date of suit in the case of ongoing infringement.

Article 62

This article raises the broad concern that the proposed registration system allows the registration of marks without requiring the use of such marks. Although many countries allow this, it often leads to "speculative registration" by unscrupulous individuals. Albania may want to consider a use provision to combat this.

Article 63

This article should refer to the appellation of origin of article 82 as an exception to the nonregistration of names of geographical origin.

Articles 70 and 71

Neither article addresses the possibility of opposition to registration by third parties who might have an interest in the matter.

Article 72, section 2(b)

This article does not clearly answer the crucial question of whether a holder can transfer rights.

Article 78

For clarity, this article should include a better definition of "damages."

Article 82, section 2

The commentators expressed concern that this article stifles new products and transactions. It allows someone who has been making ordinary goods in a particular region to harass competitors. Many of the problems created by this article could be solved by putting an emphasis on motivating people to create rather than trying to engineer equitable results.

Article 84

This article should be clarified to indicate that the product containing the design must be a functional or utilitarian one.

Article 92

This article is very broad in its application. Perhaps the limitation should be for similar products.

Article 93

This article does not adequately address renewal opportunities for patent holders.

Article 98

This article deals with the relationship between the Patent Office and the Committee of Science and Technology. One commentator suggested that too much control may be exercised by the latter organization. To promote open and proper proceedings, some sort of separate review committee may be a good idea.

IV. CONCLUSION

The commentators made additional suggestions regarding the clarity of certain articles and the sometimes inconsistent nature of the drafting or wording. All of these suggestions may be found in the full text of the comments. The commentators, however, agreed unanimously that the Law is fundamentally sound and needs only a modest number of revisions.

Appendix A

List of Experts Providing Written Comments

Roland L. Bassett
CEELI Commercial Law Liaison, Tirana

Van Elmore, Esq.

Dawn L. Haghighi, Esq.

Justin Hughes, Esq.

Edward R. Hyde, Esq.

Jeffrey J. Mayer, Esq.

Appendix B

Individual Comments on the Albanian Draft Law on Industrial Property

CEELI
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Commercial Law Liaison
Tirana, Albania
Phone/Fax (011-355-42) 34162 (CEELI House)
Phone/FAX (011-355-42) 24041 (Ministry of Justice Office)
Phone (011-355-42) 25780 (Home)

29 October 1993

Mr. Sokol Haxhi and
Ms. Diana Luga
Committee of Science and Technology
Tirana, Albania

Re: Comments on (Draft) Law on Industrial Property

Dear Sokol and Diana,

I am very pleased to have worked with you in your drafting of the Law on Industrial Property. The Law is excellent, well drafted and well thought out. I also very pleased that you have asked the Central and East European Law Initiative to provide its assessment of the Draft Law.

The Draft Law has been submitted by me to the American Bar Association in Washington, D.C. It will be reviewed by American experts in Patent and Trademark Law, including experts who can provide an international perspective to your work. The comments of these experts will be provided in an Assessment which will be forwarded to you as soon as it is available.

I have also reviewed the Draft Law and my comments are attached. I have also attached a copy of the Draft Law with several notations in the margin concerning my comments and to provide a few drafting or language suggestions for the English version of this Law. Please feel free to use any of them that you believe might be helpful.

Again, I am pleased to be working with you on this project which, as you are so aware, is vital to the emergence of the market economy in Albania. Please call whenever you would like to discuss any of this.

Sincerely,

Roland Bassett

Roland Bassett
Commercial Law Liaison
Tirana, Albania

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COMMENTS ON ALBANIA (DRAFT) LAW ON INDUSTRIAL PROPERTY

29 October 1993

Article 4, Section (2) (c)

The United States/Albania Trade Agreement requires that "Patents shall be available for all inventions, whether they concern products or processes, in all fields of technology." In this section of the draft law you exclude "programs for computers" from those inventions entitled to receive a patent. I question whether this is consistent with the Trade Agreement.

If "programs for computers" are to be excluded from obtaining patents, I would suggest that you consider changing the exclusion to "programs for computers as such." The reason for this suggestion is that Albania may want to grant patents for new inventions which utilize or are based on computer programs. If so, the exclusion should be limited to permit patents for any invention which uses computer programs, while computer programs as such would not be entitled to receive patents.

Article 4, Section (3)

In this section you exclude inventions which are, among other things, "contrary to . . . morality." The term "morality" is not defined and it would be very difficult to define. I question whether the Patent Office wants to be involved in deciding questions of morality and you may want to delete this language.

Article 5, Section (2)

This definition of "prior art" is broad enough to exclude from patentability those inventions which discover a new use for known materials. In other words, defining prior art as consisting of everything which has been made available to the public prior to the filing date, means that if a material, such as a chemical compound, is described in an earlier patent application, a new use for that chemical compound by a subsequent discovery or invention probably would not be entitled to receive a patent. This could discourage further research into the uses of known materials. You might want to consider revising this language to permit patents to be issued for the discovery of new uses for known materials.

Roland Bacsett
Commercial Law Liaison
Tirana, Albania

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Article 7

The definition of "industrial applicability" is limited to any invention which "may be manufactured or used in any field of the national economy." I have two questions about this language:

(1) The definition may be too narrow by requiring that the invention be capable of "being manufactured" or "used." I would suggest that you consider substituting the language "when it provides a consistent commercial benefit" for that language.

(2) The phrase "of the national economy" is not clear to me. I question whether this would be interpreted to be limited to Albania. Is it your concept that an inventor would not be granted a patent if he does not plan to use the invention here?

Article 10

This Article makes it clear that the rights to a patented invention belong to the employer, absent an agreement to the contrary, but the employee has a right to receive equitable remuneration for his invention. The Article assumes that the employer will apply for the patent. I question what would happen if the employer does not recognize the economic value of the discovery and never applies for a patent. One solution might be to allow the employer a set period of time, such as six months, to apply for the patent, and if the employer does not, the employer's rights would lapse and the invention would belong to the employee.

Article 12, Section (6)

This section requires that the patent application be in "the prescribed language." Compare this section with Article 67 of this Law, relating to marks. I suggest that the two sections should be the same.

Article 13, Section (4)

I do not understand this section, and it may simply be a problem in translation into English. If it is intended to provide that whenever an application is deemed to be complete and is entitled to receive a filing date, then perhaps it could be reworded as follows: " (4) When an application is deemed to comply with the requirements set forth in Article 12 of this Law and in the Regulation of the Patent Office, the Patent Office will issue to the applicant a certificate setting forth the filing date."

Article 19, Section (2)

This section imposes a very important time limit on the inventor claiming priority under the Paris Convention. Rather than state "within the prescribed time limit" I believe that you should state in this Law the time period allowed, such as a period of three months.

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Article 24, Section (5)

This section permits several Albanian public officials to prevent inventions related to the defense and security of the country from being patented abroad. I question how this would be done. Would these officials file an action in an Albanian Court seeking an injunction (similar to Article 43 "imminent infringement" actions)? Is this section limited to "secret patents"? If so, then section (5) should be limited to secret patents. If not, what standards govern "inventions related to the defense and security"? I believe that this section should be clarified and perhaps the entire procedure should be set forth.

Article 25, Section (3)

I do not understand the reference to "extrajudicial" proceedings. Perhaps this is a translation problem or perhaps the reference should be to "judicial" proceedings.

Article 27, Section (1)

I do not understand the phrase "substantiated opposition." Again, this may be a translation problem, but you may intend that an "opposition under oath" or something similar be filed.

Article 28, Section (3)

1. In Section (3) (a) I do not understand the reference to "Albania or in any territory specified in the Regulation." What territories are or will be covered? Is any distinction to be made among the various territories of the world?

2. Section (3) (a), (b) and (c) should perhaps be combined. For example, subsection (3) (c) might permit a competitor to use the patented product to attempt to invent a better one, without compensation to the inventor. I believe that it should be made clear that the uses of the invention specified in (c) and (d) of that section must also be done privately and on a non-commercial scale in such a manner that those uses do not prejudice the economic interests of the patent owner.

Article 40, Section (1)

The United States/Albania Trade Agreement requires that "non-voluntary" licenses be non-assignable unless the person who has received the non-voluntary license sells his entire business. I suggest that the following phrase be added at the end of Section (1): "and shall not be assignable except with that part of the enterprise or goodwill of the business which has been granted the non-voluntary license."

Article 40, Section (4)

I believe that this section is not necessary and the discussion of the rights to

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appeal should be included in Article 60, which governs court proceedings generally.

Article 40, Sections (5) and (6)

The word "compulsory" should be changed to "non voluntary" to make these sections consistent with the wording of the other sections in Article 40.

Article 42, Section (1)

Article 31 grants certain rights to prior users of the invention, and those rights should be included as another exception to Section (1). I suggest that the phrase "except as limited by the rights of the prior user set forth in Article 31 of this Law" be added at the end of Section (1).

Article 60

If you have deleted section (4) from Article 40, you should add a reference to "non-voluntary licenses" in the listing of Section (3), perhaps as a new subsection (k).

Article 62, Sections (1) and (2)

I have made several drafting suggestions and those suggestions are contained in the margins of the attached copy of the Law. Specifically, I believe that the Law would be clearer if the following changes were made:

1. The word "sign" should be expanded by adding "or any combination of signs."

2. The word "enterprise" may be too restrictive and it should be expanded by adding "person or enterprise" and then treating "enterprise" as a defined term.

3. Throughout the next few sections of the Law the word "mark" is used interchangeably with "trademark" and therefore I suggest that it be included as a defined term in section (1)

Article 62, Section (3)

Because the Law also provides protection for Industrial Designs, you may want to narrow section (3) (b) to provide that designs will be considered under Chapter XXI of the Law. In any event, I believe that the phrase "graphic symbols and designs" should be substituted for the word "devices."

Article 63, Section (1)

In the list of marks which may not be registered, you include those which designate "geographic origin." Because an appellation of origin is entitled to protection if it is qualified under the Law and registered under section 82, I suggest that you add, after the words "geographical origin" an additional phrase, such as "unless established as an appellation of origin under Article 82 of this Law."

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Article 65, Section 2

I do not understand the need for or the meaning of section 2(c). It seems to me that the content of this section is already included in section 2(a).

Article 67, Section (2)

I suggest that the time limit for submitting the Albanian translation of the application should be set forth in the law. Section (2) now requires that the translation be submitted within a "set term" and for clarity I believe that this should be defined, such as two or three months.

Article 67, Section (3)

I believe that the reference should be to Chapter XXVIII, rather than XXIX.

Article 70

1. The reference in section (2) that if the reply is not received in "due time" should probably be made specific, such as referring to a time limit of two or three months.

2. Notification that the application for a mark has been filed should probably be published, much in the same fashion as the application for a patent. This would permit the public or interested persons to oppose the application. I suggest that a new section be added, perhaps as section 70 (5), stating that notification will be published and that the public has a limited period to file an opposition. You might want to consider a procedure similar or identical to that outlined for patents in Article 27 of the Law.

Article 71, Section (5)

My view is that appeals <u>beyond</u> the Board of Appeal of the Patent Office should be limited to the merits of the opposition, such as whether the mark is deceptively similar to others, etc. Those who oppose the registration of the mark might also want the Courts to review not only the merits of the opposition but also procedural matters such as whether the original application complied with the requirements of the Patent Office. In order to limit the scope of the appeal to the Courts, you might want to consider adding, at the end of section (5) the following: "provided that a decision of the Board of Appeal as to the conformity of the application with the requirements of Article 67 shall be final.

Article 72, Section 2 (b)

I question the use of the words "highly reputed" in section 2(b). Does this phrase have the same meaning as "well-known" as it is used in section 65(b)? If so, I would suggest that you substitute the phrase "well known, as that term is defined in Article 65, section 2(b) of this Law."

Roland Dassett
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Tirana, Albania

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Article 72

I do not believe that Article 72 is clear as to whether the holder of a mark may transfer the right to use the mark independently of a transfer of the entire business. A decision should be made whether this will be permitted or not and a clarifying section should be added as section (6)

Article 75, Section (3)

I believe that the word "indefinitely" should be added to make it clear that so long as the requirements are met the holder of the mark has the right to renew it indefinitely.

Article 78

Under this Article the holder of a mark is entitled to receive "damages" for infringement but that term is not defined by this Law. I do not know if it has been or will be defined by some other Albanian law, but you might want to consider making it clear at this point what elements of damages might be recovered. For example, you should consider whether the following should be included: (1) the profits of the infringer; (2) damages suffered by the trademark holder which are not also included in the infringer's profits; (3) costs, including attorneys' fees, and (4) punitive damages to be allowed by the Court equal to some multiple of the actual damages, such as one, two or three times actual damages.

Article 80

In addition to the invalidation of a mark because it does not comply with the requirements of Article 62 or because it is prohibited by Article 64, the Court could also invalidate the mark because it conflicted with a prior right under Article 65. Therefore I believe that you should add a reference to Article 65 in this Article and you may want to consider adding the phrase "or that the registration conflicts with earlier rights under Article 65 of this Law."

Article 90, Section (2)

You should consider adding a phrase clearly establishing that the Patent Office ha the exclusive right to deal with all matters under the Law on Industrial Property, within the limits set forth by that law.

Article 106

It is not clear whether a "patent attorney" must also be a licensed Albanian attorney. This should be clarified. Also, I question whether the age limit and the requirement of English and French language skills are perhaps too restrictive so that there would be very few registered "patent attorneys," effectively limiting most of the

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competition for these positions.

Protection of Semiconductor Chip Products

The United States/Albania Trade Agreement requires that each country provide protection for semiconductor chip products. There is nothing in the Draft Patent and Trademark Laws covering this matter. I understand that Albania has adopted a Copyright Law, which might provide protection, but as of this date I have not received a copy of the Copyright Law.

For information, I have attached copies of the United States Law protecting Semiconductor Chip Products. These provisions are cited as 17 U.S.C.S. sections 901 through 914. These sections might prove useful to you in ensuring that Albanian law contains similar protection.

Respectfully submitted,

Roland Bassett

Roland Bassett,
Commercial Law Liaison
CEELI

Van Elmore
ATTORNEY AT LAW

November 8, 1993

Mr. John C. Knechtle
Director, Legal Assessments
CEELI
American Bar Association
1800 M Street, N.W.
Suite 200 South
Washington, DC 20036-5886

Dear Mr. Knechtle:

Thank you for the opportunity to review the Albanian draft patent and trademark law. I read through that as well as the U.S. - Albania bilateral trade agreement and analysis and the two commentaries of Mr. Bassett.

I hope that these comments will be helpful to you and ultimately to the Republic of Albania. Please don't hesitate to contact me if you would like to discuss any of this.

PATENTS

I suggest an alternative or additional description relative to utility models other than "[S]hapes...". Also the usage of "[U]tility Models...." as opposed to "[I]ndustrial Designs...." should be clarified throughout.

The descriptions of what is not patentable seem to be problematic relative to the bilateral trade agreement's requirement that processes in all fields of technology be patentable. Specifically, computer programs and medical methods are excepted from patentability.

Morality is a criteria which is probably best avoided in statutes if possible. Perhaps illegal could be substituted.

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Regarding Article 10, and regarding similar provisions in the other sections, I believe that clarification is needed. This is particularly true in regard to the treatment of employees without contracts.

The meaning of "[P]riority...." and "[P]riority date...." should be clarified.

Article 21 (2) needs to be clarified.

Article 25 (2) needs to be clarified. In part (3) of this article I do not understand what "[E]xtrajudicial proceedings...." refers to.

The exclusions from the rights of a patent owner set forth in Article 28 (3) need to be reviewed. I am concerned that the scope of these exclusions is too broad. In this same article under (4), I suggest a definition for "[S]taple commercial products...."

I question the administrative burden of annual payments in order to perpetuate the existence of the patent. Perhaps an advance of several years worth of payments could be accepted. (See Article 29)

Article 31 regarding prior users is uncomfortably broad. I believe that the language relative to "intent to use" is too loose and therefore dangerous. Likewise, the transfer of this right "[T]ogether with his enterprise or business...." seems to be too vague.

Article 43 regarding infringement, provides for an absolute statute of limitation after five years. I suggest some consideration of language relative to the discovery of the infringement, as opposed to just the act of infringement.

In Article 49, I suggest some clarification of the effect of invalidation on the protection granted during the application period.

TRADEMARKS

I suggest specifically clarifying under Article 62 (3) (b), that these aspects should be non-functional in order to be trademarks.

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INDUSTRIAL DESIGNS

I speculate that a more appropriate name should be found for this section. Design Trademark comes to mind.

In Article 84, I believe that it should be made clear that the protectable design is non-functional. (3) should be rewritten. It is confusing. Once again I think that morality is a problematic criteria in statutes.

Article 86 should be clarified regarding non-contract employees.

As a policy, I again suggest consideration of some showing of use, at some time before 5 years, as a requirement.

Article 88 should be clarified relative to the need to supplement English documents with Albanian in every case. Once again I do not think it is necessary to limit this practice to Patent Attorneys.

Article 92 is very broad in its application. Perhaps the limitation should be for similar products.

Article 93 limits the life of the registration to 25 years. I find this somewhat surprising and suggest a renewal be considered. Does the bilateral trade agreement require renewal opportunities?

Articles 94 and 95 appear to have incorrect references.

MISCELLANEOUS

Article 98 (2) (b) should list the other registrations besides patents. In (3) (c) I am not sure what is intended. I do not believe that the patent office wants to be statutorily bound to "[A]dvise....".

Article 100 regarding limitations on employees of the patent office, should be expanded. Can they have trademarks and other registrations? Can they ever have a patent?

In closing I point out that copyright, semiconductor chips and trade secrets need to be addressed somewhere, pursuant to the bilateral trade agreement.

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It appears that Albania is considering allowing the registration of marks without requiring use. Although this is the trend, I suggest consideration of the potential piracy of marks from other countries and of the potential to "tie up" unused marks for years. This seems to be further exacerbated by the fact that these registrations do not require a showing of use until the 5th year. Perhaps a shorter period might be appropriate if no use is shown at the time of application.

Article 64 and other similar provisions should be clarified in order to eliminate the confusion about whether any English documents can be submitted by themselves, without Albanian translation.

I think it is unnecessary to limit trademark practice to patent attorneys.

Article 65 (2) (a) appears to be problematic regarding the reference to subsequent acts. This should be clarified or eliminated.

In this same article, the reference to a "[T]rade name...." should be defined.

In article 72, the reference to likelihood of confusion should be expanded to make clear that this is relative to the origin of the goods. Throughout this article, care should be taken that not just goods are referred to. I question the need for (2) in this article.

Article 74 should be changed so that the seller needs to sign all transfers. (2) (g) should be changed to signature not sign.

Article 76 (3) should be changed to licensee not license.

In Article 77, I question the need for the licensor to "[E]nsure effective control of the quality...." (Emphasis added.) To require the licensor to ensure may be too restrictive.

APPELLATIONS OF ORIGIN

In article 82, the distinction between (2) and (3) needs to be improved.

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Finally, I believe that the requirements for patent attorneys, as set forth in Article 106 are too stringent. Indeed there are many highly technical areas of law, such as oil and gas, environmental and medical to name a few, which are handled every day by combinations of attorneys and other specialists. I believe that Albania should depart from the requirements in existence in the U.S. relative to patent attorneys. It is unnecessary to require one person to embody two areas of expertise, as is required in the U.S. If an oil and gas attorney needs to precisely describe recurring structures in the disturbed belt of Wyoming, she will consult a geologist with knowledge of overthrusted plates. It is not necessary for her to acquire a degree in geology. Similarly, if an Albanian attorney needs to have claims for a chemical patent, a chemist can work with the attorney on them.

Thank you for the opportunity to comment.

Yours very truly,

Van Elmore

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DAWN L. HAGHIGHI
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November 4, 1993

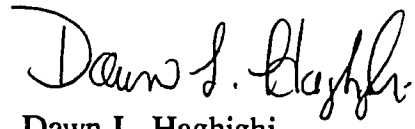
VIA FACSIMILE - 202/862-8533

Mr. Brian Mezger
CEELI
American Bar Association
1800 M Street, N.W., Suite 200S
Washington, DC 20036-5886

Dear Mr. Mezger:

Enclosed for your consideration are brief comments regarding the Albania Draft Law on Patents and Trademarks. Many of my comments follow Mr. Bassetts' comments. I look forward to working with CEELI in reviewing other proposed laws and/or projects. As you are aware, I am working with the Chinese Government in its process of modifying and restructuring its legal system. I would be interested in working on any Asian Projects. You can contact me at (312) 751-7771. Again, thank you for considering me for this project.

Very truly yours,



Dawn L. Haghighi

DLH:db
Enclosure

COMMENTS FOR CONSIDERATION

ALBANIA (DRAFT) LAW ON INDUSTRIAL PROPERTY

Article 4, Section (2c)

In order to be consistent with the United States/Albania Trade Agreement ("USATA") the exclusion regarding computers should be for computer programs and not for invention which use computer programs.

Article 4, Section (3)

This provision which excludes "patent for invention which would be contrary to public order and morality", is vague. Further, this language could be used to justify actions that infringe upon individual rights. The term "public order or morality" is not defined. Procedures are not set in this provision which would enable the Patent Office to determine what would fall in the category. Further, it should be considered whether the Patent Office wants to be involved in the determining questions of public order and morality.

Article 5, Section (2)

The definition of "prior art" is broad and may exclude from patent ability inventions which utilize known materials in a new or different way. Therefore, the definition of "prior art" would exclude an invention from receiving a patent if it incorporated a material in its invention that was part of an earlier patent application. Consideration should be given to

revising the language in this section to allow patents to be issued for the discovery of new uses for known materials.

Article 10

This Article makes it clear that the right to a patented invention belongs to the employer unless the employer and employee have agreed otherwise. This Article however, does not require the employer to apply for a patent. The Article could be revised by setting forth that the employer has the first right to apply for the patent of an invention made by an employee. If revised, the Article should specify a time period to which the employer has to apply for the patent. If the employer does not apply for the patent within the time period than the employee should be given the right to apply.

Article 13, Section (4)

As written this language as drafted is confusing and not clear. If the language intended to set forth that whenever an application is complete it is entitled to receive a filing date than this Article could be more clearly written. For example, "when the applicant submits an application that complies with the requirements of Article 12 of this Law and Regulation of the Patent Office, the Patent Office will issue to the applicant a Certificate of Filing setting forth a filing date."

Article 19, Section (2)

This Section sets forth the time limit in which the inventor can claim priority under the Paris Convention. This Section however, does not clearly state the time limit but rather states "within the prescribe time limit." For clarity, the section should specify the appropriate time period.

Article 22, Section (1)

Section (1) gives the Patent Office authority to examine whether the filed application complies with the requirements of the Patent Act. This Article should provide a timeframe for which the Patent Office should examine the time period for the which Patent Office will make the examination.

Article 24

Article 24 provides for secret patents related to the security of the country. The Article should provide a definition of what qualifies as a secret patent. Further, provisions regarding what recourse can be taken for reconsideration in the event of a denial of a request for secrecy. In regards to Section (5), which provides for public officials to prevent inventions related to the defense or security of the country from being patented abroad, this section needs to be further defined. The Section should clearly set forth the procedure by which such action may be implemented by the officials. In addition, it should be clear under

what circumstances an official may take such action. Consideration should be given to limiting such action by an official to secret patents.

Article 27

The term in section 1 "substantiated opposition" should be defined. In regards to Article 4, the procedure for opposition and the opposition proceedings could be clearly defined. Section (6) specifies that "a decision to revoke the patent may be appealed within six months subject to the procedures set by Article 60 of this Law." This provision could be drafted more clearly to set forth when the six month time frame commences.

Article 28, Section (3)

Section (3) makes reference to "Albania or any territory specified in the regulation," this phrase should be defined.

Article 33, Section (1)

This section references signing a patent application. However, the terms are vague as to what constitutes a proper assignment. Whether (1) what constitutes a valid assignment (2) what standards to be used to evaluate whether an assignment is valid i.e., an assignment may be valid in one country but not in another country.

Article 62, Sections (1) and (2)

Section (1) defines what constitutes an element of a mark. The phrase sign is undefined. Consideration should be given to define this more clearly and including possibly the language "or any combination of the sign." The word "mark" is used interchangeably with the word "trademark". To prevent future confusion the provision should use one term or the other to be consistent.

Article 67, Section (2)

This section provides for the submitting the Albania translation of the application. The timeframe is not clear. Consideration should be given to clearly setting out a specific timeframe.

Article 70

Section (2) specifies that a reply should be received "due time." For clarity a specific timeframe should be set forth in this provision.

Article 70

A provision should be added that notification of application for a mark has been filed. Consideration should be given to specifying that notification will be done by publication. Further, a time period should be specified for opposition.

Article 71, Section (5)

The language provides for an appeal beyond the Board of Appeals the Patent Office. The procedure and limitations for such appeal should be set forth and specified. Further the time period in which the appeal needs to be filed should be specified.

Article 72, Section (2)(b)

The following terms should be defined "highly reputed."

Article 78

The term "damages" is used and provided for in this Article. It should be made clear what elements of damages may be recovered and what type of damages, i.e. damages suffered by the trademark holder, costs, including attorneys' fees, compensatory and punitive damages and if punitive damages are allowed how such damages will be calculated.

Article 106

"Patent Attorney" should be clearly defined. Consideration should be given to specifying what are the limits for such an attorney. The limitation may be too restrictive.

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† TIME IN †

TELEFACSIMILE ROUTING SLIP

DATE: **12 November 1993**

TO: **Central and East European Law Initiative**
American Bar Association
Washington, D.C.

FAX #: **(202) 862-8533**

CONFIRMATION #: **(202) 331-2619**

FROM: **Justin Hughes**

Please deliver the following **06** pages (which includes this routing slip) as directed above.

IF YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL (310) 312-4203 AS SOON AS POSSIBLE.

THANK YOU.

COMMENTS:

Dear Friends:

A few weeks ago I was asked to review the Albania draft patent and trademark law. The specific comments I am sending you today waited on my desk because I could not find a letter of more general comments which I had prepared (and which your instructions said you preferred). That draft letter appears to be misplaced along with the cover letter from the ABA/CEELI, hence I have the added embarrassment of not knowing who on your staff originally sent me the materials.

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OPERATOR COMMENTS: _____

COMMENTS ON ALBANIAN DRAFT LAW ON PATENTS & TRADEMARKS

Justin Hughes

Article 2

(2) If the coverage of the phrase "inventions and distinctive signs" is intended to be the same as the range covered by Article 2(1), then a more complete wording could be used, i.e., "inventions, industrial models, trade and service signs . . . ." Otherwise, why does Article 2(2) use "distinctive signs" when Article 2(1) has used "trade and service signs"?

Article 4

(2)(c) It is interesting that the patent law explicitly excludes "programs for computers." The wording "as such" could be added to ensure that Article 4(2)(C) is not interpreted as a prohibition on patented inventions that rely on programming. I would suggest that more explicit language be considered, i.e., "programs for computers, except that the use of a computer program in a product or process shall not prevent its eligibility for patent protection."

Article 10

Hopefully, this provision adequately protects an employee who invents in his/her spare time with the phrase "in execution of . . . an employment contract." But I suggest that this article might provide a mechanism for a commissioned or employed inventor to apply for a patent if the employer chooses not to apply.

Article 14

(1)(b) If I understand it correctly, I do not agree, on principle, with providing patent protection to biologically reproducible material on these terms. I also do not know if this

provision is practical in the short-term unless the Albanian Patent Office could designate a depository institution outside Albania.

Article 21

(4) This section is a little confusing because "publication of the application" is actually publication of an abstract of the application. This could be remedied by changing the wording or making (5) into (4)(f) such that "publication" meant publication of the abstract and making the entire applications available for inspection at the Patent Office.

(4)(a) What does "information on the inventor" mean? This sounds ominous and I would suggest that the information be set out, i.e., "name, nationality, research institute or business address."

Article 24

The topic of secret patents is especially unfamiliar. How does one handle infringement of a secret patent? How does one handle a normal patent application whose claims are found to overlap with claims recognized in a secret patent? Denying the claims on the grounds that they are already covered by a secret patent would effectively publicize the secret patent?

Article 25

(2) Should "claimant to a secret invention protected by a patent" read "claimant to an invention protected by a secret patent"?

Article 29

Should this article have any provision for possible resuscitation of the patent by paying back fees within a certain time?

Article 33

(2) If this provision is intended to be similar to 35 U.S.C. 651, is the intended meaning of this provision that "Only the patent owner as registered with the Patent Office may institute any legal proceedings concerning the patent." As it is presently written, it does not prohibit an unregistered owner from bringing suit. This provision also provides that the Patent Office will publish registered changes of ownership. Wouldn't it be less costly to make the registers publicly available the way the applications are publicly available in Article 21?

Article 43

(1) The statute of limitations providing that proceedings "may not be instituted after five years from the act of infringement" could lead to ambiguities with continuing infringement. An alternative would be: "Damages may be recovered only for infringement occurring within five years before proceedings are instituted."

(What about cases where the infringer intentionally hid the infringement? Does Albanian Law generally provide for a tolling of statutes of limitations in such cases?)

(3)(b) Should this have the same limiting language as (3)(a), i.e. "Unless the license contract provides otherwise . . . ."

Article 45

(3) Would it be preferable if both "disclosure" read "claims"?

Article 61

Should the statute of limitations idea in Article 43 be moved to this Article instead so that all the statute of limitations ideas are together?

Trademark Law

Article 63

(2)(b) Is this sentence intended to capture "secondary meaning" by providing that distinctive meaning may be acquired by use? If so it might be better to expand "it is devoid of distinctive character" in (1)(a) to say "it is devoid of distinctive character, either distinctive character inherent in the mark or distinctive character acquired through use." This raises the issue whether a mark could fit both the (1)(b) description and have a distinctiveness acquired by use (perhaps because it is, for a time, the only product in that market segment?).

Article 76

(3) In the second sentence, "license" should be "licensee"? Does "any legal proceeding concerning the license contract" include infringement actions? Perhaps I have read this too quickly but Articles 76-78 do not set out the licensee's right to sue.

Article 78

Is there a statute of limitations for trademark infringement proceedings? Perhaps I have missed it.

Article 81

Are (1)(a) and (1)(b) cumulative, i.e. (a) and (b), or disjunctive, i.e. (a) or (b)?

Article 89

(1) The last words "on that day" would be clearer if replaced with, "on the first day the design was exhibited at said exhibition."

Article 95

Parallel to 76-78, there is no explicit provision for whether the licensee can sue for infringement?

Article 98

Should (2)(b) say "grant patents, trademarks, and . . ." or "grant legal protection as described in (2)(a)"?

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MEMORANDUM

TO: John C. Knechtle
CEELI

FROM: Edward R. Hyde

DATE: November 5, 1993

SUBJECT: Albanian Draft I.P. Law

****

I reviewed the draft legislation and my comments on specific sections follow.

My overall reaction to the draft is that it is very professionally done. I particularly note that the draft Patent Harmonization Treaty was taken into consideration in that some of its language was tracked in the Albanian draft. In my review I did not include a determination of compliance with the Albanian/US Trade Relations Treaty because that has already been thoroughly done apparently by Roland Bassett and a table of comparison exists.

Article 4 Section (2) (c)

"Programs for computers" are excluded from patentable subject matter. It should be made clear that this exclusion refers to programs per se whereas processes or apparatus employing computer programs would be patentable subject matter.

Article 7

Limiting inventions to the "field of the national economy" may be too restrictive. Developments could result that have non-economic benefits and it might be well to permit patenting of these.

Article 10

This article provides that the employer receives rights to employee inventions. This properly pertains whether the employer elects to file a patent application or not as by retaining it as a trade secret.

I guestion the obligation of the employer to remunerate the employee. I should think his employment compensation would be sufficient. Further, it should be made clear that the inventions to which the employer receives rights are only those made by the employee either within the scope of his employment duties or related to the employer's activities.

Article 12

It would be well if the application papers included a statement (a declaration or oath) that the applicant is in fact the originator or creator of the invention.

Article 13 Section (2) (b)

It would be well to provide that in the event of minor informalities in the application papers, when the informality is remedied the applicant receives the benefit of the original filing date.

Article 13 Section (4)

This apparently refers to a filing receipt and perhaps this should be clarified.

Article 21 Section (3)

This section seems to state that an applicant receives rights upon publication of his application that are the same as he would receive from the issuance of a patent. It is not clear to me what is intended. Perhaps it means that upon subsequent issuance of the patent, his rights revert back to the publication date. This should be clarified.

Article 25 Section (3)

The reference to "extrajudicial proceedings" probably means secret proceeding inasmuch as the subject is secret patents. This should be clarified.

Article 28 Section (3) (b)

This exception to infringement liability could be a problem. It would permit individuals to make and use patented items in their homes. The invention might specifically be for a home product. The patentee would then have to sustain the burden of significant economic loss.

Article 30

It is not entirely clear to me on what date patent rights come into existance. The implication is that rights accrue upon publication inasmuch as (3) refers to Art. 21. If infringement liability commences upon publication it should be so stated.

Article 35

This provision appears to permit a joint owner of a patent application to assign his interest but not license without the permission of the co-owner. This appears anomalous because one joint owner can convey the greater right by assignment but not grant the lesser license rights.

Article 39

Sec. (4) provides that a person shall be entitled to use an invention as a license subject to appropriate compensation per Sec. (1). It is not clear who determines what is appropriate compensation. Is it the patent owner or the patent office.

Article 42

This article should refer to the prior use Sec. (3) as an exception to infringement.

Article 43

The five year statute of limitations seems harsh. Sometimes infringement occurs within an infringers facility unknown to the patent owner. The provision could be modified as (1) five years after knowledge by the patent owner, or (2) no damages for more than five years prior to suit.

Article 62

Sec. (2) limits collective mark to a registered one. If it's intended that collective marks may exist unregistered the limitation "registered" should be deleted.

Article 63

This should refer to the appellation of origin of Art. 82 as an exception to the non-registration of names of geographical origin.

Article 70 and 71

There does not appear to be a procedure for publishing a mark to permit third parties who believe they may be harmed by the registration to appear and be heard. This is a serious deficiency. Thus an additional section should be added providing for publication and opposition procedure along with right to appeal to the Board of Appeals and the Court.

Article 75

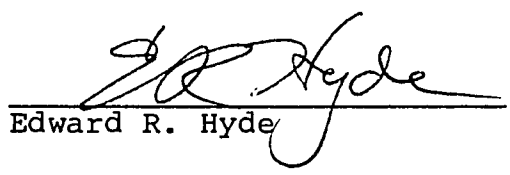
A requirement for renewal is that the mark has been used on the goods Sec. (2) (f). This use requirement should be more specific, as for example current use at the time of renewal. An anomaly in the law appears to be that registration may be effected by mere intention to use, Sec. 47 (1) (e) whereas some actual use is required for renewal. I wonder if this is intended.

Article 84

Although the industrial design must be non-functional it is not stated that the product containing the design must be a functional or utilitarian one. This should be clearified.

Article 86

As in Art. 10 I question the desirability of renumeration to the exployee or independent contractor over and above his contracted compensation for his employment for industrial designs.



Edward R. Hyde

ASSESSMENT OF DRAFT ALBANIAN LAW ON INDUSTRIAL PROPERTY LAW

NOVEMBER 8, 1993

BY: JEFFREY J. MAYER[1]

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[1] J. Kevin Parker, of the Texas and Illinois Bars, assisted me with this effort.

My primary critique of the Albanian Draft Law on Industrial Property is that it does not clearly and fully define th· roles of the participants. Most importantly, it seems to create a patent office with weak substantive powers but with sufficient procedural power to control the outcome of the patent process. On the other hand, it seems to me that technical patent and trademark concepts have generally been well handled, although the European concepts used are not what we are accustomed to in the United States. I have divided concerns in four parts: (A) An Analysis of How The Act Defines The Roles of the Participants; (B) The Disincentives to Entrepreneurship; (C) Unnecessary Fine-Tuning; and (D) Specific Comments On The Role of the Patent Office.

A. THE ACT DOES NOT CLEARLY DEFINE THE ROLE OF THE PARTICIPANTS.

Throughout the Act, substantive concepts are established without a simultaneous creation of standards and procedures for the various entities who will apply or assert those standards.

Article 13, for example, raises severe difficulties. The Act gives the absolute final say as to the adequacy of a patent application to the Board of Appeal of the Patent Office. Without any other recourse, the Board of Appeal has unreviewable discretion to stifle an application. This power is particularly troublesome in light of the potential applicability of Article 15(5), which would allow the Board of Appeal to reject an application if the claims are not presented consistent with as yet

unwritten the Patent Office regulations. Further, this grant seems inconsistent with the grant of power to the Courts under Articles 22 and 60; both of which apparently incorporate the same requirements. The solution would be to develop a coherent understanding of the responsibility of the Patent Office.

Article 10 raises similar issues. Article 10(2) provides that an employee/inventor shall have the right to a compensatory sum fixed by the court. This provision fails to consider the roles of the parties. For example, will the employer try to force an early decision and simultaneously downplay the importance of the invention? Will the award be fully modifiable even if it is a lump sum, and, in any event, how can the employee enforce or modify the award? These issues must be addressed through better defined procedure.

The procedural ambiguity muddles otherwise clear substantive standards. Article 21(3) provides that an application creates provisional patent rights, which seems clear enough, but Article 21(6) allows a Court to override those rights until the application process ends. No standards guide the Court in making such a determination and, if a Court examined the patent and stayed proceedings on the grounds that the patent is likely invalid, it makes no sense to let the Patent Office review the patent application. The Court will eventually invalidate the patent under Article 48 as the patent office is not performing a similar review. See Article 22. Considering the way an Article 21 proceeding would play out, the likely scenario based upon a

valuable patent is an immediate battle over the merits of the patent under Article 21(6) that will moot further proceedings. Perhaps clearer standards, or a bonding requirement, under Article 21 would help. The ultimate solution, however, is to define the relationship between the Patent Office and the Courts.

Similar issues are raised by the secret patent Articles. An inventor who seeks secrecy review can only be penalized for requesting such a review (loss of the patent). To encourage secrecy review, the inventor should receive a reward for requesting such a review or the standards for granting secrecy should be made uniform.

The solution to all these issues, I suggest, is a greater effort to think about what all the actors are going to do as opposed to only thinking about the substantive standards.

B. DISINCENTIVES TO ENTREPRENEURSHIP

Throughout the draft law are disincentives, perhaps inadvertent, to creative research. The drafters should think more about the purpose of the patent law to resolve these issues.

Article 7, for example, imposes a restricted definition of industrial applicability. Basic research or an invention grounding a whole new industry might not be within "any field of the national economy." This seems to exclude inventions new to the Albanian market, which are exactly what the law should encourage.

Inventions classified as secret are only eligible for a "lump-sum" payment determined in extra-judicial, presumably (secret), proceedings. The potential of a stingy one-time award will discourage research in critical areas. Similarly, limiting the right to enforce the patent against prior users cuts the heart out of the patent rights. See Article 31. Cf. Article 92. (Why should the holder of an industrial design have greater rights than the holder of a patent?)

Forcing non-voluntary licenses severely inhibits creativity (although it is part of other countries' schemes). Imagine a situation in which the Albanian market is not ready for a product, hard-working entrepreneurial owner/inventor might be forced to divert his energies from presenting the product to the market to a court battle on who can market the invention.

Finally, I believe Article 82(b) is stifling on new products and transactions. It allows somebody who has been making ordinary goods in a particular region to harass competitors. This is a European approach, but I would not think that multiple Albanian products should be subject to the same controls as, say, French champagne. Many of these issues can be spotted and resolved by thinking about motivating people to create rather than trying to engineer equitable results.

C. UNNECESSARY FINE-TUNING

Throughout the Act I observed what I call unnecessary fine-tuning. For example, Article 40 on non-voluntary licenses provides that "both the owner of the patent and the person requesting the non-voluntary license [must have] an adequate opportunity to present arguments." This opportunity should go without saying and be part of all procedures growing out of the Act.

Breaking off utility models as separately patentable, Article 55-57, seems to invite dangerous distinctions, even though the underlying standards appear the same.

Finally, Article 4 provides a caveat to the prohibition on patents contrary to public morals -- "the exploitation shall not be deemed to be so contrary [to public morals] merely because it is prohibited by the legislation" -- which has the perverse result of allowing the rejection of an invention devoted to a legal objective, and the acceptance of an invention devoted to an illegal objective. Each of these examples shows that the drafters are trying to do too much. See also Articles 82(2) and 82(3) (difficult to harmonize).

To address these problems, the Act should select a acceptable standard and not try to make sure the standard is always applied fairly by adding additional language. This is again a matter of understanding the role of the tribunal applying the standard.

D. THE ROLE OF THE PATENT OFFICE.

My concern regarding the definition of roles also applies to the definition of a patent office and patent attorneys. Some typical issues are:

Article 98, What type of independence do we want between the Patent Office, which appears subservient to the Committee of Science and Technology of the Republic of Albania. Perhaps a separate review committee could keep proceedings open and proper. See also Article 99.

Article 100, May a patent attorney also work in the courts? What separate role should patent attorneys have? Do you need patent attorneys if the patent office function is so limited?

CONCLUSION

Not much is missing from the Act. Although not intended to be covered by this Act, Albania should also provide for trade secret protection as well as a law protecting franchise rights. Given the solid technical base of the Act, however, I believe this is a useful draft that can be put into good form in short order.

Appendix C

Draft Law on Industrial Property

Republic of Albania

(DRAFT)LAW ON INDUSTRIAL PROPERTY

Note: This publication is based on an unofficial English translation issuing by the Albanian Patent Office

GENERAL PROVISIONS

Article 1

Object

This Law provides the grant and the protection of the following industrial property rights:
- patents and utility models,
- trade marks and service marks,
- designs,
- appellations of origin.

Article 2

Forms of Protection

(1) Inventions and industrial models shall be respectively protected by patents and utility models.

Trade and service signs shall be protected by trade marks or service marks.

New shapes of products, pictures and drawings shall be protected by industrial designs.

Geographical names of products shall be protected by appellations of origin.

(2) Legal and natural persons that are foreign nationals shall enjoy, in respect of the protection of inventions and distinctive signs in the Republic of Albania, the same rights as domestic legal or natural persons, if this results from international contracts and conventions which have been acceded to by the Republic of Albania or from the application of the principle of the reciprocity.

The existence of reciprocity shall be proved by the party invoking the reciprocity.

PART I

PATENTS AND UTILITY MODELS

CHAPTER I

Form of Protection and Patentability

Article 3
Protection of inventions by the patents

By means of this Law the inventions shall be protected by the patents, that shall be granted from the Patent Office.The granting of patents is an exclusive right of the Patent Office.

Article 4
Conditions of patentability

(1) In order to be patentable, an invention shall be novel, shall involve an inventive step (shall be non-obvious) and shall be industrially applicable.
(2) The following, in particular, shall not be regarded as inventions within the meaning of paragraph(1):

(a) discoveries, scientific theories and mathematical methods,
(b) aesthetic creations;
(c) schemes, rules and methods for performing mental acts, playing games or doing business, and programs for computers;
(d) presentations of information.

(3) A patent shall not be granted in respect of an invention the publication or exploitation of which would be contrary to public order or morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by the legislation

(4) No patents are granted for substances obtained through internal nuclear transformations for military purposes.
(5) No patents are granted for inventions of surgical or diagnostic methods or methods of treatment practised on the human or animal body, with the exception of inventions relating to devices and substances for use in any of these methods.

Article 5
Novelty

(1) An invention shall be considered novel if it does not form part of the prior art. For the determination of novelty, items of prior art may only be taken into account individually.
(2) The prior art shall consist of everything which, before the filing date or, where priority is claimed, the priority date of the application claiming the invention, has been made available to the public by means of publishing, exhibition, demonstration or use.
(3) The prior art shall also include the content of any patent application as filed in, or with effect for, Republic of Albania, to the extent that such application or the patent granted thereon is published subsequently by or for the Patent Office, provided that the filing date or, where priority is claimed the priority date of such application is earlier than the date referred to in paragraph (2).

Article 6
Inventive step

An invention shall be considered to involve an inventive step if its solution of the technical problem is, for a skilled person, not obviously deducible from the state of the art.

Article 7
Industrial applicability

An invention shall be considered as industrially applicable if the object of the invention may be manufactured or used in any field of the national economy.

Article 8
Grace period

(1) Disclosure of information which otherwise would affect the patentability of an invention claimed in the application shall not affect the patentability of that invention where the information was disclosed during the 12 months preceding the filing date or, where priority is claimed, the priority date of the application:

(a) by the inventor or any person who, at the filing date of the application, had the right to the patent;

(b) by a Patent Office and the information was contained:

(i) in another application filed by the inventor and should not have been disclosed by the Office, or,

(ii) in an application filed without the knowledge or consent of the inventor by a third party which obtained the information direct or indirectly from the inventor,

(c) by a third party which obtained the information direct or indirectly from the inventor.

(2) The effects of paragraph (1) may be invoked at any time

(3) Where the applicability of paragraph (1) is contested, the party invoking the effects of that paragraph shall have the burden of proving, or of making the conclusion likely, that the conditions of that paragraph are fulfilled.

CHAPTER II

Right to a Patent.Mention of Inventor.

Article 9
Right to a Patent

(1) The right to a patent shall belong to the inventor or his successor in title. Joint inventors shall, unless they agree otherwise, have equal rights.

(2) Where two or more applications have been filed by different persons in respect of the same invention and the inventors concerned made the invention independently of each other, the right to a patent for that invention shall belong to the applicant whose application has the earliest filing date or, where priority is claimed, the earliest priority date, as long as his application is not withdrawn or abandoned, considered to be withdrawn or abandoned, or rejected.

Article 10
Employee inventions

(1) Notwithstanding Article 9, when an invention is made in execution of a commission or an employment contract, the right to the patent for that invention shall belong, in the absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer.

(2) The employee shall have the right to equitable remuneration taking into account his salary, the economic value of the invention and any benefit derived from the invention by the employer.In the absence of agreement between the parties, the remuneration shall be fixed by the Court.

Article 11
Mention of inventor

(1) Any publication of the Patent Office, containing the application or the patent granted thereon, shall mention the inventor or inventors as such.

(2) Notwithstanding paragraph (1), where the inventor (or inventors) requests in a declaration signed by him and filed with the Patent Office, that

such publications should not mention him (or them) as inventor, the Patent Office shall proceed accordingly.

CHAPTER III

Application and the Procedure up to Grant

Article 12
Requirements of application

(1) An application for a patent shall be made in the prescribed form and shall contain:

(a) a request for the grant of a patent;

(b) a description of the invention for which a patent is applied for;

(c) a claim or the claims;

(d) any drawings, if necessary, referred to in the description or the claims, in order to elucidate the essence of the invention and its claims;

(e) an abstract of the invention.

(2) The application shall identify the inventor or, where there are several inventors, all of them.

(3) The applicant shall indicate the legal grounds of his entitlement to file the application.

(4) The application shall be accompanied by the prescribed filing fee.

(5)Where the application is filed with the Patent Office through a representative (as referred to in Chapter XXVIII), it shall be accompanied by the respective authorization.

(6) The application shall be drafted in the prescribed language, as defined in the Regulation of the Patent Office.

Article 13
Filing date

(1) The filing date of an application shall be the date of receipt by the Patent Office of the application, meeting the requirements of the paragraphs (1),(2),(3),(4)and(5)of the Article 12.~~Article 12~~

(2)(a) If the Patent Office finds that, at the time of receipt of an application, the requirements referred to in paragraph (1) have not been fulfilled, it shall invite the applicant to comply with the missing requirement within three months from the filing date of the application. Upon applicant's request, this time limit may be postponed for two months, when there are justifiable reasons.

(b) If the applicant complies with the invitation referred to in subparagraph (a), the filing date of the application shall be the date of receipt of all missing requirements.If the applicant fails to comply with such an invitation, the application shall be treated as if it had not been filed.

(c) Where the description refers to drawings which are not included in the application, the Patent Office shall invite the applicant to furnish the missing drawings.If the applicant complies with the said invitation, the filing date of the application shall be the date of receipt of the missing drawings.If the applicant fails to comply with the invitation, the filing date shall be the date of receipt of the application and any reference to the drawings shall be deemed to be deleted.

(3) If, subject to subparagraph (2)(b), a decision not to file an application has been made, the applicant may, on payment of fee, appeal to the Board of Appeal of the Patent Office within a three month period.The Board of Appeal shall examine the appeal within three months and its decision shall be final.

(4) Where the application is conferred to an filing date, the Patent Office shall notify him and issue the respective certificate.

Article 14
Disclosure and description

(1)(a) The application shall disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art.

(b) Where the application refers to biologically reproducible material which cannot be disclosed in the application in such a way as to enable the invention to be carried out by a person skilled in the art and such material is not available to the public, the application shall be supplemented by a deposit of such material with a depositary institution.

(2)(a) The application shall contain a description.

(b) The description shall have the prescribed contents, as defined in the **Regulation of the Patent Office**, and such contents shall be presented in the prescribed manner, as defined in the same **Regulation**.tco.

(c) The description may be presented in a different manner and order as specified in the **subparagraph (2)(b)** only if, owing to the nature of the invention, it would afford a better understanding and a more economic presentation.

Article 15
Claims

(1) The application shall contain one or more claims.
(2) The claims shall define the matter for which protection is sought.
(3) Each claim shall be clear and concise.
(4) The claims shall be supported by the description.
(5) The claims shall be presented in the prescribed manner, as defined in the **Regulation of the Patent Office**.

Article 16
Abstract

The abstract shall merely serve the purpose of technical information; in particular, it shall not be taken into account for the purpose of interpreting the claims.

Article 17
Unity of invention

(1) An application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept.
(2) Failure to comply with the requirement of unity of invention shall not be a ground for invalidation of a patent.

Article 18
Division of application

(1) The applicant may divide the application into two or more applications ("**divisional applications**"), provided that each divisional application shall not go beyond the disclosure in the initial application.
(2) Each divisional application shall be entitled to the filing date or, where priority is claimed, the priority date of the initial application.
(3) Priority documents and any required translations thereof that are submitted to the Patent Office in respect of the initial application shall be considered as having been submitted in respect of all divisional applications.

Article 19
Right of priority

(1) The application may contain a declaration claiming the priority, pursuant to the **Paris Convention for the Protection of Industrial Property**, of one or more earlier national, regional or international applications filed by the applicant or his predecessor in title in or for any **State party** to the said **Convention**.
(2) Where the application contains a declaration under **paragraph (1)**, the Patent Office may require that the applicant furnish, within the prescribed time limit, a certified copy of the earlier application.
(3) The effect of the declaration referred to in paragraph (1) shall be as provided in the **Convention** referred to in that paragraph.
(4) If the Patent Office finds that the requirements under this **Article** and the **Regulations** pertaining thereto have not been fulfilled, it shall invite the applicant to file the required correction. If the **applicant** does not comply with the said invitation, the declaration referred to in **paragraph (1)** shall be considered not to have been made.

Article 20
Amendment or correction. Withdrawal of application.

(1) The applicant shall have the right, on his own initiative, to amend or correct the application up to the time when the application is in order for grant, on payment for this the prescribed fee.
(2) No amendment or correction of the application may go beyond what has been disclosed in the application as filed.
(3) Amendments or corrections may be also made upon the request of the Patent Office.
(4) The applicant may withdraw the application at any time during its pendency.

Article 21
Publication of applications for patents

(1)(a) Subject to subparagraphs (b),(c)and(d) of this paragraph, the Patent Office shall, within the time limit provided for in paragraph (2), publish all applications filed with it.
(b) No application shall be published if it is withdrawn or rejected before the expiration of 17 months from the filing date or, where priority is claimed, the priority date of the application.
(c) No application shall be published if it is regarded secret.
(d) If, by the time an application should be published according to paragraph(2), a patent has been granted on that application, the Patent Office may not publish the application but shall publish the patent in the prescribed manner, and shall allow any interested person to inspect the application.
(2) The Patent Office shall publish each application filed with it promptly after the expiration of 18 months from the filing date or, where priority is claimed, from the priority date of the application.However, where, before the expiration of the said period of 18 months, the applicant presents a written request to the Patent Office that his application be published, the Patent Office shall publish the application promptly after the receipt of the request.
(3) A patent application shall, where published under this Article, provisionally confer upon the applicant from the date of such publication the same rights in respect of the subject-matter of the application as are conferred in respect of the subject-matter of a patent.
(4) The publication of the application shall include:
(a) information on the inventor (if he has not renounced the right to be mentioned) and on the applicant;
(b) the title of the invention;
(c) the filing (priority) date of the application;
(d) the International Patent Classification (IPC) indexes;
(e) the abstract of the invention.
(5) As soon as the application has been published, any person has the right to inspect the application materials in the Patent Office and to obtain, on payment of cost thereof, a copy of the description and drawings of the invention.
(6) The Court may decide to stay any proceedings brought before it in respect of unauthorized acts performed in relation to an invention that is the subject of a published application until a final decision has been made by the Patent Office to grant or refuse a patent on the application.
(7) A patent application shall be deemed never to have the effects set out in paragraph (3) if it is withdrawn or finally rejected.

Article 22
Examination of the application and grant of the patent

(1) The Patent Office shall examine whether the filed application complies with the requirements of the Article 4(2),(3) and Articles 14,15,17 and 18, including the language in which the application should be drafted (subject to Article 12(6)) The Patent Office shall not perform the examination of the application as to substance; it shall not evaluate the conformity of the invention with the Law provisions on patentability of the invention, as referred to Articles 4(1), 5, 6 and 7. A patent shall be granted without a guarantee of its validity.
(2) If the applicant has not met the requirements of Article 17 of this Law on the unity of the invention and, if the applicant , in response to the Patent Office's notification of the abovementioned violation of the requirements, has not informed the Patent Office of a division of the application or has not requested to examine only those claims of the invention or group of inventions which conform to the requirement for invention unity, then any

further processing of the application shall be conducted only in relation to the first claim of the invention.

(3) If the results of the application examination are positive and the requirements referred to **paragraph (1)** are fulfilled), then within four months from the date of the publication of the application, or if an opposition on the filed application is filed, then within four months from the date the opposition has been rejected, the Patent Office shall grant the patent to the applicant on payment of the prescribed fee.

(4) If the application does not conform or only partially conforms to the requirements of **paragraph (1)**, the Patent Office shall notify the applicant, specifying the discrepancies and setting a three month period for providing a reply.The application shall be rejected if the applicant fails to correct the deficiencies indicated by the Patent Office.

(5) The decision, in accordance with **paragraph (4)**, may be, on payment of fee, appealed against the Board of Appeal of the Patent Office within a three month period.If the applicant is not satisfied with the decision of the Board of Appeal, he may appeal this decision within six months subject to the procedure laid down by **Article 60** of this Law.In the case of the applications regarded as secret (under the **Article 24**), to the Board of Appeal, is co-opted a group of experts from the ministry which has categorized the invention as secret, and the decision of the Board of Appeal shall be final.

(6) As soon as the Patent Office has adopted a decision on the grant of the patent, it shall publish a notification that the patent has been granted and publish the patent in the prescribed manner, except for the secret patents,which are proceeded under the **Article 24**.

Article 23
Patent register

(1) The Patent Office shall maintain a patent register in which patents granted shall be recorded, numbered in the order of their grant.

(2) The patent register shall include such matters constituting or relating to the patent as are prescribed and entries of all corrections, amendments, change in ownership or other matters that the Patent Office is empowered or required by this Law to record.

(3) The patent register shall be prima facie evidence of all matters directed or authorized by or under this Law to be entered therein.

(4) The patent register shall be open to public inspection, subject to such rules as may be prescribed.

(5) Certified copies of any entry in the patent register shall be given by the Patent Office to any person requiring the same on payment of the prescribed fee and a copy so certified shall be admissible in evidence in all courts and proceedings without further proof or production of the original.

Article 24
Secret patents

(1) Secret patents are granted for inventions related to the defence and the security of the country.

(2) The secrecy of the application is judged by the Ministry of Defence, Ministry of Public Order or National Informative Security:

(a) before filing of the application - for the inventions made within the network of the Ministry of Defence, Ministry of Public Order or the National Informative Security, or made in any other organization upon a contract therewith;

(b) within a three-month time limit from the date of filing of the application - when the applicant has requested the grant of a secret patent;

(c) within a three-month time limit from the references to the Ministry of Defence, Ministry of Public Order or National Informative Security, when in the examination process the applicant or the Patent Office asks for judgement for secrecy by their own initiative.

(3) If, within the time limits specified in the preceding paragraph, the Ministry of Defence, Ministry of Public Order or National Informative Security do not notify that the application should be considered secret, it is reckoned that there is no decision for secrecy.

(4) The Patent Office publishes, free of charge, only the numbers of the secret patents granted.

(5) The Ministry of Defence, Ministry of Public Oder and National Informative Security could prohibit patenting abroad of inventions related to the defence and security of the country.

Article 25
Exploitation of secret inventions

(1) The responsible Ministry (Ministry of Defence, Ministry of Public Order or National Informative Security) shall have the exclusive right to work and dispose of secret invertions.
(2) The rightful claimant to a secret invention protected by a patent shall be entitled to a lump sum as compensation regardless of the scope of the use of the invention for the needs of national defence.
(3) The amount of compensation referred to in the second paragraph of this Article shall be agreed upon by the applicant and by the responsible Ministry (according to paragraph (1)).If an agreement cannot be reached, the applicant shall be entitled to request from a competent court to determine, in extrajudicial proceedings, the amount of compensation.

Article 26
Inspection of files

(1) The file relating to a patent application may be inspected before the grant of the patent only with the written permission of the applicant.
(2) Where an application is withdrawn in accordance with Article 20(4), the file relating to it may be inspected only with the written permission of the person who withdrew the application.
(3) Only the Ministry of Defence, Ministry of Public Order and National Informative Security have access to the materials of secret patent applications and patents in the Patent Office, under Article 24.

Article 27
Opposition to the grant of patent

(1) Within nine months from the date the announcement of the grant of patent is published, any person, on payment of fee, shall have the right to file with the Board of Appeal of the Patent Office a substantiated opposition against the grant of patent. The opposition shall be filed in written form in two copies.

(2) An opposition against the grant of patent may be filed with the Board of Appeal, if the requirements of Article 4(3),(3) and Articles 12,14,15,17,18 of this Law have not been observed.
(3) Oppositions against the grant of patent on the grounds of other requirements set in this Law, shall be reviewed by court, according the Article 60.
(4) Pursuant to paragraph (1) of this Article, a copy of the opposition shall be forwarded to the applicant who shall prepare observations within three months.On the request of the applicant, this term may be extended for one more month.The Board of Appeal shall examine the opposition within three months from the date of receipt of the applicant's observations.The applicant and the opponent shall be notified of the opposition examination 30 days before the fixed date of the proceedings.Both parties shall have the right to participate in the opposition proceedings, to submit essential materials and to provide oral explanations.
(5) According to the results of the opposition examination, the Board of Appeal shall adopt a decision either to fully or partially revoke the patent or to reject the opposition.
(6) Rejection of the opposition does not deprive the opponent of the right to contest the granted patent in accordance with general provisions.A decision to revoke the patent may be appealed within six months subject to the procedure set by Article 60 of this Law

CHAPTER IV

Effects of a Patent

Article 28
Rights conferred by a patent

(1) Where the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts:
(a) the making of a product incorporating the protected invention;
(b) the offering or the putting on the market of a product incorporating the protected invention, the using of such a product, or the importing or stocking of such a product for such offering or putting on

the market or for such use;

(c) the inducing of third parties to perform any of the above acts.

(2) Where the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts:

(a) the using of a process which is the subject matter of the patent;

(b) in respect of any product directly resulting from the use of the process, any of the acts referred to in **paragraph (1)(b)**, even where a patent cannot be obtained for the said product;

(c) the inducing of third parties to perform any of the above acts.

(3) Notwithstanding **paragraphs (1)** and **(2)**, the owner of a patent shall have no right to prevent third parties from performing, without his authorization, the acts referred to in **paragraphs (1)** and **(2)** in the following circumstances:

(a) where the act concerns a product which has been put on the market by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in Albania or in any territory specified in the Regulations;

(b) where the act is done privately and on a non-commercial scale, provided that it does not significantly prejudice the economic interests of the owner of the patent;

(c) where the act consists of making or using for purely experimental purposes or for scientific research;

(d) where the act consists of the extemporaneous preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(4) A patent shall also confer on its owner the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means, relating to an element of that invention, exclusively for carrying out the invention, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention. This provision shall not apply when the means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

Article 29
Term of patents and maintenance fees

(1) The term of a patent shall be 20 years as from the filing date of the application.

(2) The maintenance of a patent shall be subject to the payment of the prescribed fees. These fees shall be due each year on the date corresponding to the filing date.

(3) Any maintenance fee may be paid within a period of six months beginning on the date when it became due, paying in this case a supplementary fee for the delay.

(4) If a maintenance fee is not paid according to **paragraphs (2)** and **(3)**, the patent shall lapse on the date when the fee became due.

Article 30
Extent of protection and interpretation of claims

(1) The extent of the protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings so as to combine fair protection for the owner of the patent with a reasonable degree of certainty for third parties.

(2) Notwithstanding **paragraph (1)**, a claim shall be considered to cover not only all the elements as expressed in the claims, but also equivalents.

(3) For the period up to grant of the patent, the extent of the protection conferred by a patent application shall be determined by the latest filed claims contained in the publication under Article 21. However, the patent as granted or as amended in invalidation proceedings shall determine retroactively the protection conferred by the patent application, in so far as such protection is not thereby extended.

(4) An element shall generally be considered as being equivalent to an element as expressed in a claim if, at the time of any alleged infringement, either of the following conditions is fulfilled in regard to the invention as claimed:

(a) the equivalent element performs substantially the same function in substantially the same way and produces substantially the same result as the element as expressed in the claim, or,

(b) it is obvious to a person skilled in the art that the same result as that

achieved by means of the element as expressed in the claim can be achieved by means of the equivalent element.

(5) In determing the extent of protection, due account shall be taken of any statement limiting the scope of the claims made by the applicant or the owner of the patent during procedures concerning the grant or the validity of the patent.

(6) If the patent contains examples of the embodiment of the invention or examples of the functions or results of the invention, the claims shall not be interpreted as limited to those examples.

Article 31
Prior user

(1) A patent shall have no effect against any person who in good faith, for the purposes of his enterprise or business, before the filing date, or, where priority is claimed, the priority date of the application on which the patent is granted, and within Albania was using the invention or was making effective and serious preparations for such use.Any such person shall have the right, for the purposes of his enterprise or business, to continue such use or to use the invention as envisaged in such preparations.

(2) The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made

Article 32
Limitation of rights with respect to means of transport and transit goods

The rights under the patent shall not extend to the use of the patented invention on any foreign vessel, aircraft or land vehicle which temporarily or accidentally enters the waters, airspace or land of Albania provided that the patented invention is used exclusively for the needs of the vessel or in the construction or operation of the aircraft, spacecraft or land vehicle.

CHAPTER V

Change in Ownership and Joint Ownership of Patent Application or Patent

Article 33
Change in ownership of patent application or patent

(1) Any contract assigning a patent application or a patent must be in writing and must be signed by the parties to the contract.Otherwise it shall not be valid.

(2) Any change in the ownership of a patent application or a patent shall be recorded in the patent register on payment of the prescribed fee.The owner of the patent shall be entitled to institute any legal proceedings concerning the patent if the change in the ownership has been recorded in the patent register.The Patent Office shall publish the change of the ownership of the patent.

Article 34
Judicial assignment of patent application or patent

Where the essential elements of the invention claimed in a patent application or patent were derived from an invention for which the right to the patent belongs under Article 9 or 10 to a person other than the applicant or owner of the patent, that person may request the Court to order the assignment to him of the patent application or patent.

Article 35
Joint ownership of patent application or patent

(1) Where there are joint applicants of a patent application, each of the joint applicants may seperately assign or transfer by succession his share of the application, but the joint applicants may only jointly withdraw the application or conclude license contracts with third parties under the application.

(2) Where there are joint owners of a patent, each of the joint owners may separately assign or transfer by succession his share of the patent or institute court proceedings for an infringement of the patent against any person

exploiting the patented invention in Albania without the agreement of all the joint owners, and the exploitation of the patented invention in Albania by one of the joint owners shall not require the agreement of the other joint owners, but the joint owners may only jointly surrender the patent or conclude license contracts with third parties under the patent.

(3) The provisions of this Article shall be applicable only in the absence of an agreement to the contrary between the joint applicants or owners.

CHAPTER VI

Contractual Licenses and Licenses of Right

Article 36
License contract

(1) For the purposes of this Law, "license contract" means any contract by which a party (**"the licensor"**) gives to the other party (**"the licensee"**) his agreement for that other party to perform in Albania any of the acts referred to in Article 28 in respect of an invention claimed in a patent or a patent application.

(2) A license contract must be in writing and must be signed by the parties to the contract.Otherwise it shall not be valid.

(3) The fact that a license contract has been concluded may be recorded in the patent register on payment of the prescribed fee.The licensee shall be entitled to institute any legal proceedings concerning the license contract only if it has been recorded in the patent register

(4) Contracts for license and for sale of secret patents can be signed if there is written consent by the Ministry of Defence, Ministry of Public Order or National Informative Security.

(5) If the owner of the patent fails to pay the prescribed fee within the set term, according with Article 29, and a license contract has been entered in the register in favour of a third person, the Patent Office shall inform that person that the fee has not been paid and that he may pay the fee within six months from the date of the notification in order to preserve the validity of the registered right.In case of a dispute on ensuring the registered rights of a third person, the court may, if deemed essential for ensuring those rights, decide that the patent be transfered to the person, in whose name the license is registered

Article 37
Rights of licensee

(1) In the absence of any provision to the contrary in the license contract, the agreement given by the licensor to the licensee shall extend to the performance in respect of the invention of all the acts referred to in Article 28 without limitation as to time, in the entire territory of Albania, and through any application of the invention.

(2) In the absence of any provisions to the contrary in the license contract, the licensee may not give to a third person his agreement to perform in Albania in respect of the invention any of the acts refered to in Article 28.

Article 38
Rights of licensor

(1) In the absence of any provision to the contrary in the license contract, the licensor may give to a third person his agreement to perform in Albania in respect of the invention the acts referred to in Article 28 and shall not be obligated to abstain from performing them himself in Albania.

(2) If the license contract provides that the license is exclusive, and unless it is expressly provided otherwise in the license contract, the licensor may neither agree to the performance in Albania in respect of the invention by any third person of, nor himself perform in Albania, the acts referred to in Article 28 which are covered by the said contract

Article 39
Licenses of right

(1) Where the owner of a patent files a written statement with the Patent Office that he is prepared to allow any person to use the invention as a licensee in return for appropriate compensation, the maintenance fees which fall due after receipt of the statement shall be reduced according to the Regulations.

(2) The statement may be withdrawn at any time upon written notification to this effect to the Patent Office, provided that no one has informed the owner of the patent of his initiative to use the invention.
(3) The statement may not be filed as long as an exclusive license is recorded in the patent register.
(4) On the basis of the statement, any person shall be entitled to use the invention as a licensee under the conditions laid down in the Regulations. Any license so obtained shall be treated as a contractual license.
(5) No request for recording an exclusive license in the patent register shall be admissible after the statement has been filed, unless the said statement is withdrawn.

CHAPTER VII

Non-Voluntary Licenses

Article 40
Non-voluntary licenses

(1) On the request of any person who proves his ability to work the patented invention in Albania, made after the expiration of a period of four years from the filing date of the application for the patent or three years from the grant of the patent, whichever is later, the Court may grant a non-exclusive, non-voluntary license if the patented invention is not worked or is insufficiently worked in Albania. The grant of the non-voluntary license shall be subject to the payment of equitable remuneration to the owner of the patent.
(2) Notwithstanding paragraph (1), a non-voluntary license shall not be granted if the Court is convinced that circumstances exist which justify the non-working or insufficient working of the patented invention in Albania.
(3) In deciding whether to grant a non-voluntary license, the Court shall give both the owner of the patent and the person requesting the non-voluntary license an adequate opportunity to present arguments.
(4) The owner of the patent and the person requesting the non-voluntary license may appeal to the Court of Higher Instance from a decision of the Court under this Article.
(5) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.
(6) The compulsory licenses for secret patents are granted by the Council of Ministers at the request of the Ministry of Defence, Ministry of Public Order or National Informative Security.

Article 41
Exploitation by Government or by third parties authorized by Government

Where the national security or public safety so requires, the Minister may authorize, even without the agreement of the owner of the patent or of the applicant, by notice published in the Official Journal, a government agency or a person designated in the said notice to make, use or sell an invention to which a patent or an application for a patent relates, subject to payment of equitable remuneration to the owner of the patent or the applicant. The decision of the Minister with regard to remuneration may be the subject of an appeal to the Court.

CHAPTER VIII

INFRINGEMENT

Article 42
Acts of infringement

(1) Subject to this Law, the performance of any act referred to in Article 28(1),(2) and (4) in Albania by a person other than the owner of the patent, and without the consent of the latter, in relation to a product or process falling within the scope of protection of the patent shall constitute an infringement of the patent.
(2) Subject to this Law, the performance of any act referred to in Article 28(1),(2) and (4) in Albania by a person other than the applicant, and without

the consent of the applicant, in relation to a product or process falling within the scope of provisional protection conferred on a published patent application under Article 21(3) shall constitute an infringement of that provisional protection.

Article 43
Infringement proceedings

(1) The owner of a patent and the applicant for a patent shall have the right to institute proceedings in the Court against any person who has infringed or is infringing the patent or the provisional protection conferred on a published patent application. The owner of the patent and the applicant shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur ("imminent infringement"). The proceedings may not be instituted after five years from the act of infringement.

(2)(a) If the owner of the patent proves that an infringement has been committed or is being committed, the Court shall award damages and shall grant an injunction to prevent further infringement and any other remedy provided in the general law.

(b) If the owner of the patent proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the general law.

(3)(a) Unless the license contract provides otherwise, any licensee may request the owner of the patent to institute Court proceedings for any infringement indicated by the licensee, who must specify the relief desired.

(b) Such licensee may, if he proves that the owner of the patent received the request but refuses or fails to institute the proceedings within three months from the receipt of the request, institute the proceedings in his own name, after notifying the owner of the patent of his intent. The owner of the patent shall have the right to join in the proceedings.

(c) Even before the end of the three-month period referred to in subparagraph (3)(b), the Court shall, on the request of the licensee, grant an appropriate injunction to prevent infringement or to prohibit its continuation, if the licensee proves that immediate action is necessary to avoid substantial damage.

(4) Where the subject matter of the patent is a process for obtaining a product, the burden of establishing that a product was not made by the process shall be on the alleged infringer if either of the following conditions is fulfilled.

(a) the product is new, or

(b) a substantial likelihood exists that the product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.

Article 44
Declaration of non-infringement

(1) Subject to paragraph (4) of this Article, any interested person shall have the right to request, by instituting proceedings against the owner of the patent, that the Court declare that the performance of a specific act does not constitute an infringement of the patent.

(2) If the person making the request proves that the act in question does not constitute an infringement of the patent, the Court shall grant the declaration of non-infringement.

(3) The owner of the patent shall have the obligation to notify any licensees of the proceedings. The licensees shall have the right to join in the proceedings in the absence of any provisions to the contrary in the license contract.

(4) If the act in question is already the subject of infringement proceedings, the defendant in the infringement proceedings may not institute proceedings for a declaration of non-infringement.

CHAPTER IX

Changes in Patents, Surrender and Invalidation

Article 45
Changes in patents

(1) The owner of a patent shall have the right to request the Patent Office to make changes in the patent in order to limit the extent of the protection conferred by it

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(2) The owner of a patent shall have the right to request the Patent Office to make changes in the patent in order to correct mistakes or clerical errors, made in good faith. Where the change would result in a broadening of the extent of protection conferred by the patent, no request may be made after the expiration of two years from the grant of the patent and the change shall not affect the rights of any third party which has relied on the patent as published.
(3) No change in the patent shall be permitted under paragraphs (1) or (2) where the change would result in the disclosure contained in the patent going beyond the disclosure contained in the application as filed.
(4) If, and to the extent to which, the Patent Office changes the patent according to paragraphs (1) or (2), it shall publish the changes.

Article 46
Patents of addition

(1) An applicant or patentee who supplements or improves an invention for which an application has been previously filed or a patent granted (hereinafter: **basic patent application** or **basic patent**) shall have the right to request a patent of addition in the time limit of eighteen months following the date of filing of the basic application.
(2) Unless otherwise provided for by this Law, the withdrawal of the basic application shall cancel the application procedure for the patent of addition.
(3)(a) At the patentee's request, the Office shall issue a decision by which the patent of addition is declared a basic patent if the grant of the basic patent has been revoked or the basic patent has lapsed.
(b) The request as referred to in the subparagraph (3)(a) of this Article must be filed within three months following the date on which the decision or revocation of the basic patent has become final or the date on which it has lapsed.
(4) If a patent of addition is declared a basic patent, other patents of addition, on the patentee's request, may be bound to the new basic patent as patents of addition.

Article 47
Surrender

(1) The owner of a patent may surrender the patent by written declaration submitted to the Patent Office. The surrender may be limited to one or more claims of the patent.
(2) The Patent Office shall record the surrender and publish notification of it as soon as possible. The surrender shall take effect from the date of receipt of the declaration by the Patent Office.

Article 48
Invalidation

(1) The Court may, on the application of any person, invalidate a patent, in whole or in part, on any of the following grounds:
(a) that the subject matter of the patent is not patentable within the terms of Article 4(1) and Articles 5,6 and 7;
(b) that the patent does not disclose the invention in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art (according with the requirements of Article 14).
(c) that the subject matter of the patent exceeds the scope of the invention as disclosed in the patent application in its original wording (Articles 21 and 45 of this Law).
(d) that the patent has been granted to a person who is not entitled to such rights (Article 34 of this Law).
(2) The Court may require the owner of the patent to submit to it for the purpose of examination publications and other documents showing the prior art which have been referred to either in connection with an application for a patent or other title of protection filed, for the same or essentially the same invention, by the owner of the patent, with any other national or regional patent office, or in connection with any proceedings relating to the patent or other title of protection upon such application.

Article 49
Effects of invalidation

(1) Any invalidated patent, or claim or part of a claim shall be considered to be null and void from the date of the grant of the patent.
(2) Wher a decision of the Court to invalidate a patent, in whole or in part, becomes final, the Court shall notify the Patent Office of the decision, which shall record the decision and publish it as soon as possible.

CHAPTER X

International Applications under the Patent Cooperation Treaty

Article 50
Application of the Patent Cooperation Treaty

(1) For the purposes of this Chapter and Chapter XI of this Law, "international applications" means an application filed under the Patent Cooperation Treaty (hereinafter referred to as the "PCT").
(2) Where reference is made in this Law to the PCT, such reference shall include the Regulations under the PCT.
(3) In the Republic of Albania, any international patent application shall be equivalent to an application filed with the Patent Office in accordance with Article 13 of this Law. Such an international application shall be considered to have the effect of a regular national application as of its international filing date and this date shall be considered to be the filing date of the application with the Patent Office, provided the Republic of Albania is indicated in the international application as a "designated" state (within the meaning of Article 4(1)(ii) of the PCT) or "elected" state (within the meaning of Article 31(4)(a) of the PCT).
(4) In the case of conflict between the provisions of the PCT and the provisions of this Law and of any implementing legislation, the provisions of the PCT shall prevail.

Article 51
Designated Office and Elected Office

(1) Where the Republic of Albania is indicated in the international applic as a "designated" state or "elected" state and the applicant, in accor with Chapters I to IX of this Law, wishes to obtain a patent of the Rep of Albania, he shall, within one month after the expiration of the time applicable under Articles 22 or 39 of the PCT, submit to the Patent Of translation into the prescribed language (under the PCT) of the internat application and a translation into the Albanian language of the cl abstract of the invention and textual matter on the drawings and pay the fee.
(2) The international application shall be considered as withdrawn if, w the time limit referred to in this Article, the translation into the Alb language of the claims, abstract of the invention and textual matter on drawings is not submitted to the Patent Office.
(3) Further examination of the international application in the Patent C shall be carried out in accordance with the provisions of Articles 18, 22 24 of this Law.
(4) Any international application designating Albania which has published under Article 21 of the PCT shall give rise to the same rights a application published under Article 21 of this Law as from the date on w a translation into the Albanian language of the abstract of the invention been published by the Patent Office. This translation shall be published w three months from the date of its submission to the Patent Office.
(5) Where an international application claims both a patent of the Republ Albania and a European patent, the applicant shall be given, notwithstan general requirements of this Article, the opportunity either to follow procedure prescribed in the previous paragraphs of this Article, or, after b granted a European patent, to file with the Patent Office, in accordance the requirements of Article 53(2), an express request for registration of European patent.

Article 52
International applications filed with the Patent Office as Receiving Office

(1) If the applicant of the international application is a citizen or a permanent resident of the Republic of Albania, then, in accordance with the Article 10 of the PCT, the international application may be filed with the Patent Office as a "receiving" Office.
(2) Subject to Rule 14 of the Regulations under the PCT, the international application shall be filed in an established procedure upon payment of a transmittal fee
(3) International applications filed with the Patent Office as a "receiving" Office shall be filed in the languages specified in the agreement with the International Bureau.

CHAPTER XI

REGISTRATION OF EUROPEAN PATENTS

Article 53
Request for the registration of a European patent

(1) For the purposes of this Law, "European patent application" means an application for a European patent filed under the Convention on the Grant of European Patents (European Patent Convention) as well as an international application, designating or not Albania in which the wish to obtain a European patent under the European Patent Convention is indicated.
(2) The applicant of a European patent application or his successor in title may, within a time limit which, subject to Article 51(5) of this Law, shall be 12 months from the filing date or, where priority is claimed in the European patent application, the priority date of the European patent application, file with the Patent Office a request for the registration of the European patent, if any, resulting from the said application. The request shall be accompanied by the payment of the prescribed fee to the Patent Office.
(3) If the European patent application contains different sets of claims for different States party to the European Patent Convention, the request for registration shall specify the set of claims which shall be applicable in respect of Albania.
(4) The request for registration shall be published in the prescribed manner by the Patent Office promptly after the expiration of 18 months from the filing date or, where priority is claimed in the European patent application, the priority date of the European patent application or, where Article 51(5) applies, promptly after the applicable time limit referred to in that Article.
(5) Any European patent application which has been published by the European Patent Office or the International Bureau of the World Intellectual Property Organization and in respect of which a request for registration has been filed and the accompanying fee has been paid shall give rise to the same rights as an application published under Article 21 of this Law, as from the date on which a translation into the prescribed language of the claims of the published European patent application has been made available to the public at the Patent Office.
(6) The request for registration may be withdrawn at any time by the person who had filed it or his successor in title
(7) Where the European patent application has been rejected, refused, withdrawn or considered withdrawn or the European patent resulting from the said application has been surrendered before registration or has been revoked under Article 54(4), the request for registration shall be considered withdrawn, and the person who had filed the request for registration or his successor in title shall promptly inform the Patent Office accordingly.Such information shall be promptly published by the Patent Office in the prescribed manner if the request for registration has already been published under paragraph (4) of this Article.

Article 54
Registration of the European patent

(1) Within three months from the date on which the mention of the grant of the European patent the registration of which was requested under Article 53 is published by the Patent Office, the person who had filed the requested for registration or his successor in title shall furnish a translation into the prescribed language of the claims of the European patent to the Patent Office and shall pay the prescribed fee to the Patent Office.

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(2) Where the requirements of paragraph (1) have been complied with, the Patent Office shall register the European patent. Such registration shall have the same effect as the grant of a patent under Chapters I to IX of this Law. The registration shall have the benefit of the filing date and any applicable priority date to which the European patent is entitled. As soon as possible after the decision to effect registration, the Patent Office shall publish a notification that the registration has been effected and shall publish the registration in the prescribed manner.

(3) If, as a result of an opposition filed with the European Patent Office, the European patent is maintained with amended claims, the owner of the patent granted under paragraph (2) shall, within three months from the date on which the decision to maintain the European patent as amended is published by the European Patent Office, furnish a translation into the prescribed language of the amended claims of the European patent, and the Patent Office shall amend the registration accordingly and shall promptly effect a publication in the prescribed manner.

(4) If, as a result of an opposition filed with the European Patent Office, the European patent is revoked under the European Patent Convention, the registration shall be null and void.

(5) The term of registration shall be 10 years from the filing date referred to in paragraph (2).

(6) Subject to paragraph (2), third sentence, and paragraphs (3) to (5), the registration shall be governed by the same provisions of this Law and of any implementing legislation as those applicable to a patent granted under Chapters I to IX of this Law.

(7) To the extent that the registration and a patent granted under Chapters I to IX of this Law have been effected or granted for the same invention to the same person or his successor in title with the benefit of the same priority date or, where the registration or the patent or both do not benefit of a priority date, the same filing date, the patent granted under Chapters I to IX of this Law shall no longer have any effect as from the date on which the time limit for opposing the European patent under the European Patent Convention has expired without an opposition having been filed or as from the date on which the opposition procedure under the Convention has resulted in a final decision maintaining the European patent in force.

(8) At any time after the furnishing of the translation referred to in paragraph (1), the Patent Office or the Court may ask the person referred to in paragraph (1) or his successor in title to furnish a translation into the prescribed language of the whole European patent to it.

CHAPTER XII

UTILITY MODELS

Article 55
Patentable utility models

(1) Patents are granted for utility models which are new and industrially applicable.

(2) Protection by utility models is made available to models capable of affording effectiveness or ease of application or use to machines or parts of machines, to instruments, to utensils and every date objects, where they consist in special forms, arrangements, configurations or combinations of elements, satisfying the requirements as per the preceding paragraph.

A patent granted for a machine as a whole shall not imply protection of the parts of the machine.

The effects of a utility model patent shall extend to models having equivalent utility, on condition that they are based on the same innovative concept.

(3) Patents for utility models are not granted for the methods and the objects as per Article 4 (2),(3) and (4) of this Law.

Article 56
Novelty and industrial applicability

The novelty and the industrial applicability of the utility models are defined as per the provisions of Articles 5 and 7 of this Law.

Article 57
Legal protection

Legal protection for utility models is provided by patents with a duration of 10 years, starting from the filing date.

Article 58
Transformation

Upon applicant's request, a patent application for invention can be transformed into a patent application for utility model until a decision is made with regard thereto.

Article 59
Treatment of the utility models

The treatment of inventions is equally applicable for the utility models, unless something else has been provided in the present Chapter.

CHAPTER XIII

THE REVIEW OF DISPUTES IN COURT

Article 60
Jurisdiction of courts in reviewing patent disputes

(1) Disputes concerning rights related to patents or other disputes based on this Law, shall be reviewed by court.
(2) The civil actions instituted by each interested party related to all the questions of this Article shall be subject to the court in the jurisdiction of which the defendant resides, unless other procedures are set by this Law or other legislative acts in force.
(3) The courts of the Republic of Albania must adjudicate disputes related to the following issues:

(a) rejection of the accepted patent application (Articles 22(5) and 51(3));
(b) non-registration of the European patent application (Article 54(2));
(c) patent invalidation (Article 48);
(d) authorship (co-authorship) of the invention (Articles 9, 34 and 35);

Article 58
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(c) patent invalidation (Article 48);
(d) authorship (co-authorship) of the invention (Articles 9, 34 and 35);
(e) right to an employee invention (Article 13);
(f) questions concerning to the relations between the licensors and the licensees (Chapters VI and VII);
(g) rights of prior use (Article 31);
(h) decisions of the Board of Appeal of the Patent Office (Article 27(6));
(i) right of priority (Article 19);
(j) inheritance rights to a patent application or a patent (Articles 9 and 33);
(4) Decisions of Courts of First Instance on any type of disputes referred to in this Article, may be appealed to the Courts of Higher Instances.

Article 61
Terms for instituting actions in courts

(1) Within the period of patent duration, an action may be instituted in court without any time limitation, if the dispute has arisen:
(a) on the annulment or invalidation of patents (Article 48);
(b) on the grant of licenses.
(2) In other cases of disputes, which are not referred to in paragraph (1) of this Article, the term for instituting an action in court is limited to three years unless this Law or the legislative acts in force provide for other terms.

PART II

TRADEMARKS AND SERVICE MARKS

CHAPTER XIV

Conditions of Protection and Right to Protection

Article 62
The constituent elements of a mark

(1) Any sign capable of distinguishing the goods or services of one enterprise from those of other enterprises and being represented graphically may serve as a mark for goods or a mark for services (hereinafter referred to as "mark").

(2) A collective trademark is a trademark registered by an industrial or commercial cooperation, or an association or the like organization of several enterprises, and which is used in order to designate the goods and services of this association. Each enterprise of the association may also simultaneously have its own trademarks. Particular provisions on collective trademarks are prescribed in specific articles of this Law, but in other cases, the provisions prescribed to trademarks also apply to collective trademarks.

(3) The following signs may, in particular, constitute a mark :

(a) words, including personal names, letters, numerals, abbreviations;
(b) figurative signs, including devices, shapes of goods or of their packing or containers;
(c) combinations of colours and shades of colours;
(d) any combination of the signs referred to in items (a) to (c) of this Article.

Article 63
Non-registrable marks

(1) The following marks shall not be registered as trademarks :

(a) it is devoid of distinctive character;
(b) it consists exclusively of signs or indications which may serve in trade, to designate the kind, quality, quantity, intended purpose, value, geographical origin or the time of production of the goods or of rendering the services, or other characteristics of goods or services;
(c) it consists exclusively of signs or indications which have become customary in the current language or established practices of the trade;
(d) it consists of shapes or forms imposed by inherent nature of the goods or services or necessary to obtain a technical result;
(e) marks not consisting in visible signs, in particular, sound marks and olfactory marks.

(2)(a) The distinctive character of a sign shall be assessed in relation to the goods and services which the sign is intended to distinguish.
(b) Distinctive character may be acquired by use.

Article 64
Absence of Violation of Public Interests

(1) A sign shall not be protected as a mark or element of a mark if such protection would violate a public interest.

(2) The following in particular shall not be protected as a mark or element of a mark :

(a) state names (complete or abbreviated),
state emblems,
official hallmarks adopted by states,
as well as names (complete or abbreviated),
abbreviations and emblems of intergovernmental organizations and religious symbols, except with the permission of the competent authorities;
(b) signs that violate the public order or morality;
(c) signs liable to mislead the public, particularly as regards the nature, quality or geographical origin of the goods or services which they intend to distinguish.

the state, under the law of which the said legal entity has been incorporated;

(d) the name and the address of the representative if any, of the applicant;

(e) a declaration of intention to use the mark;

(f) the representation of the mark;

(g) the names of the goods and services for which the registration is sought, grouped according to the classes of the **International Classification of Goods and Services** and using, wherever possible, term of **Alphabetical List of Goods and Services** established in respect of the said **Classification**;

(h) where priority is claimed in the application, words to that effect, together with the identification of the Patent Office with which the application whose priority is claimed (**"the priority application"**) was filed, the filing date of the priority application and, if available, the number of the priority application;

(i) the signature of the applicant.

(2) The request of the application shall be in Albanian while other application materials may also be submitted in English. The Patent Office is entitled to request a translation of the submitted materials and documents into Albanian; these translations shall be submitted to the Patent Office within a set term. All further processing of the application (correspondence) shall be in Albanian.

(3) A foreign applicant (where the applicant has neither a domicile nor a real and effective industrial or commercial establishment on the territory of the Republic of Albania), may only file an application and maintain correspondence with the Patent Office through a **patent attorney** (trademark agent) who has been registered in the Patent Office, according to the **Chapter XXIX** of this Law.

(4) When applying a collective trademark, one shall submit Regulations on the use of a collective trademark which have been confirmed by the executive authority of the collective trademark or a person authorized by the executive authority. The Regulations shall indicate the trademark users, the provisions for the use of the trademark and information on the control of the use of the mark. The collective trademark owner shall notify the Patent Office of all amendments which are made later in the Regulations.

(5) The application shall be accompanied by the prescribed fee.

(6) The Priority Right shall be known for countries party to the **Paris Convention for the Protection of Industrial Property.**

Article 65
Conflict with Earlier Rights

(1) A sign shall not be protected as a mark or element of mark if its use as a mark would be in conflict with an earlier right.

(2) The following in particular, shall be considered as an earlier right:

(a) an identical or similar mark of a third party, in respect of identical or similar goods or services or, under the conditions of **Article 72 (1) (b)**, in respect of goods or services which are neither identical nor similar, which has an earlier filing date or priority date and which has been registered or subsequently will be registered;

(b) a well-known mark, within the meaning of **Article 6bis of the Paris Convention for the Protection of Industrial Property**, of a third party;

(c) a trade name already used in the Republic of Albania by a third party.

Article 66
Right to protection

(1) The exclusive right to a mark under this Law shall be acquired by registration effected by the Patent Office.

(2) The exclusive right to a mark may be acquired under joint ownership.

CHAPTER XV

Procedure for Registration

Article 67
Filing Date

(1) As the date of filing of the application shall be considered the date when the Patent Office receives documents which include:

(a) the request to register a trademark;

(b) the name and address of the applicant;

(c) where the applicant is a legal entity, the nature of that legal entity and

Article 68
Temporary Protection of Marks exhibited at international exhibitions

(1) The applicant for registration of a mark who has exhibited goods bearing the mark, or services to be rendered under the mark at an official or officially recognized international exhibition and, who applies for registration of that mark within six months from the day on which the goods or services offered under the mark were first exhibited in the exhibition shall, on his request, be deemed to have applied for registration on that day.
(2) Evidence of the exhibition of goods bearing the mark or services to be rendered under the mark shall be given by a certificate issued by the competent authorities of the exhibition, stating the date on which the mark was first shown in connection with goods or services included in the exhibition.

Article 69
Division of application

Any application referring to several goods or services, may be divided by the applicant into two or more applications by distributing among the latter the goods or services referred in the initial application. The divisional applications shall preserve the filing date of the initial application and the benefit of the right of priority, if any. Each divisional application shall be accompanied by the prescribed fee.

Article 70
Examination as to formalities

(1) Within two months after the receipt of the application, the Patent Office shall conduct a preliminary examination of the application, examine the conformity of the application with the requirements of Article 67 of this Law and in accordance with the set procedure, establish the filing date of the application and if the applicant has the right of priority, the filing date of priority.
(2) If the application does not conform or only partially conforms to the prescribed requirements, the Patent Office shall notify the applicant, specify the non-conformity and determine a term for a reply. If the reply is not received in due time, or essential deficiencies are not eliminated, the application shall be considered as not filed and the applicant shall be notified of this, in writing.
(3) Within a period of three months from the date of receipt of the rejection, the applicant has the right, upon the payment of fee, to submit a substantiated appeal to the Board of Appeal of the Patent Office (hereinafter referred to as the Board of Appeal).
(4) If the application conforms to the requirements of Article 67 of this Law, the Patent Office shall send a written notice to the applicant on the acceptance of the application for examination (the acceptance of the application).

Article 71
Registration of the mark

(1) The Patent Office shall examine the conformity of the accepted application to the requirements of Article 62, Article 63 (1) (e) (d), Article 64 (2) (a) (b) of this Law.
(2) In the course of examination, the Patent Office is entitled to request from the applicant additional materials and documents necessary for examination, thereby indicating the term for their submission.
(3) Within a period of three months after the application has been accepted for examination, the Patent Office, in accordance with the results of the examination, shall adopt a decision to register the trademark or to reject the registration thereof. The applicant shall be notified of the decision in writing and publication of the mark.
(4) Within a period of two months after the date of receipt of the registration rejection, the applicant shall have the right, upon paying the prescribed fee, to file a substantiated appeal with the Board of Appeal.
(5) The applicant may, within six months from the date of the decision, appeal against other decision of the Board of Appeal to the Court.

CHAPTER XVI

Effects of Registration of Mark

Article 72
Rights conferred by registration

(1)(a) The holder of the registration of a mark shall have the right to prevent a third party from using, without his authorization, in the course of trade as a mark or a trade name, an identical or similar sign for goods or services which are identical or similar to those in respect of which the mark is registered, where such use would result in a likelihood of confusion. Where the use relates to an identical sign for identical goods or services, the likelihood of confusion shall be assumed.

(b) The holder of the registration of a mark shall have the right to prevent a third party from using without his authorization, in the course of trade as a mark or a trade name, an identical or similar sign for goods or services which are neither identical nor similar to those in respect of which the mark is registered, where the mark has become highly reputed and the use is detrimental to the distinctive character or repute of the mark.

(2) Notwithstanding paragraph (1) of this Article, the holder of the registration shall not have the right referred to in the paragraph in respect of goods which have been put on the market in the territory of Republic of Albania, or in any territory specified in the **Regulations**, by the holder of the registration or with his express consent, provided that neither the goods nor the manner in which the mark is applied to the goods are altered.

(3) The holder of the registration of a mark shall not have the right to prevent a third party from using bona fide its name, address, pseudonym, or an exact indication concerning the kind, quality, quantity, destination, value, place of origin, or time of production or of supply of its goods or services insofar as such use is confined to the purpose of mere indication or information and cannot mislead the public as to the source of goods or services.

(4) Each person or enterprise may own one or more trademarks.

(5) Exclusive rights on a trademark shall be certified with a registration certificate issued by the Patent Office.

Article 73
Changes in names or addresses

Where there is no change in person of the holder but the name or address, the request for the recording the change in its Register of marks be made in a communication sig his representative and indicating the registration numbe concerned and the changed to be recorded.

Article 74
Change in ownership

Where there is a change in person of the holder, the requ of the change by the Patent Office in its Register of t communication signed by the holder or his representati who acquired the ownership or his representative registration number of the registration concerned and recorded.

Article 75
Term of registration and renewal

(1) The registration of trademark is made for ten years co of the registration.

(2) A request for the renewal of a registration shall co indications or elements:

(a) a request for renewal of registration;
(b) the name and address of the holder;
(c) the date and the registration number of the registrati
(d) the name and the address of the representative, if a
(e) the names of goods or services for which the renew registration is sought, grouped according to the clas International Classification of Goods and Service wherever possible, terms of Alphabetical List of G established in respect of the said Classification;
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used within the period fixed by the Law, in respect of the goods or services covered by the request for renewal.

(g) a sign by the holder of the registration or by his representative, if any.

(3) It may be renewed, on payment of the prescribed fee, for the additional terms of ten years.

CHAPTER XVII

License Contracts

Article 76
License contracts

(1) For the purposes of this Law, "license contract" means any contract by which the holder of the registration of a mark ("the licensor") gives to the other party ("the licensee") his agreement for that other party to perform in the territory of the Republic of Albania any of the acts referred to in Article 72 of this Law in respect of registered mark.

(2) A license contract must be in writing and must be signed by the parties to the contract. Otherwise it shall not be valid.

(3) The fact that the license contract has been concluded may be recorded in the Register of marks on payment of the prescribed fee. The license shall be entitled to institute any legal proceedings concerning the license contract only if it has been recorded in the Register of the marks.

Article 77
Nullity of license contracts

The license contract shall not be valid if it does not provide for an obligation by the licensor to ensure effective control of the quality of the goods or services of the licensee in connection with which the registered mark is used.

CHAPTER XVIII

Infringement

Article 78
Infringement proceedings

(1) The holder of the registration of a mark shall have the right to institute proceedings in the Court against any person who has infringed or is infringing his rights under Article 72 of this Law. The holder shall have the same right against any person who has performed acts or is performing acts which make it likely that such infringement will occur ("imminent infriogement").

(2)(a) If the holder of the registration of a mark proves that an infringement has been committed or is being committed, the Court shall award damages and shall grant an injunction to prevent further infringement and any other remedy provided in the general Law.

(b) If the holder of the registration of a mark proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the general Law

CHAPTER XIX

Renunciation, Invalidation, Revocation

rticle 79
nunciation

(1) The holder of the registration of a mark may renounce the registration by written declaration submitted to the Patent Office. The renunciation shall take effect from the date of receipt of the declaration by the Patent Office. The renunciation may be in respect of all or some of the goods or services for which the mark is registered.

(2) The Patent Office shall record the renunciation in the Register of marks and publish it

Article 80
Invalidation

(1) The Court may, on the request of any person, invalidate a registration on the ground that the registration does not comply with Article 62 and Article 64 of this Law.
(2) Any invalidate registration shall be considered to be null and void from the date of the registration.
(3) When the decision of the Court to invalidate the registration becomes final, the Court shall notify the Patent Office of the decision. The Patent Office shall record the decision in the Register of marks and publish it.

Article 81
Revocation

(1) The Court may, on the request of any person, revoke a registration :
- (a) if the holder of the registration has not used the registered mark in connection with the goods or services referred to in the registration during a period of five years, without good reason;
- (b) if , in consequence of the act or inactivity of the holder of the registration, the registered mark has become the common name in the trade for a good or service;

(2) A registration may not be revoked under paragraph (1) (a) of this Article in the case of any of the following uses of the registered mark in connection with the goods or services referred to in the registration :
- (a) use made under a license contract recorded in the Register of marks;
- (b) use of the mark in a modified form which does not alter its distinctive character;
- (c) affixing of the mark on goods or their packaging exclusively for export;
- (d) use of the mark in publicity and business correspondence.

(3) Any revoked registration shall cease to have effect on the date on which the revocation becomes effective.

CHAPTER XX

Appellations of Origine

Article 82
Appellations of origin

(1) Appellations of origin may be used for marking natural products, industrial products and handicraft products.
(2) The appelations of origin shall protect :
- (a) geographical names of products, whose distinctive properties are mainly due to the location or region where they are produced, if such properties are a natural consequence of either the climate or of established manufacturing procedures or processes;
- (b) the name of a product which through long use in economic transactions, has become a generally known indication that the product originates from a certain location or region.

(3) The appellations of origin may not protect :
- (a) geographical names which due to long use in economic transactions have become generally known to designate certain kinds of products.

(4) The Patent Office shall recognize the right to use the appellation of origin applied for upon securing the expert opinion of competent authorities concerning to :
- (a) products which may be marketed under a given appellation of origin;
- (b) locations or regions from which products marked with given appellations of origin originate;
- (c) production requirements a product must fulfil in order to be marketed with the appellation of origin;
- (d) the way of marking the products and further detailed requirements for recognition of the right to use given appellations of origin.

(5)(a) An appellation of origin shall be established by entering the geographical name and kind of product to which the name relates in the register of protected appellations of origin.

(b) An appellation of origin of a product may also be established in the interest of a foreign person, on the basis of an international agreement or the

reciprocal protection of appellations of origin concluded by the Republic of Albania.

PART III

INDUSTRIAL DESIGNS

CHAPTER XXI

Definition and Protectability

Article 83
Protection of industrial designs

(1) Under this Law, industrial designs shall be protected upon registration by the Patent Office.

(2) The protection referred to in paragraph (1) of this Article shall not exclude any other rights provided for in the law, in particular, rights based on the law of copyright.

Article 84
Definition of an industrial design. Conditions of protection

(1) For the purposes of this Law, "industrial design" means the two or three dimensional features of the appearance of a product which are not dictated solely by the technical function of the product.

(2) (a) In order to be protectable, an industrial design shall be new.

(b) An industrial design shall not be considered to be new if it is identical or closely similar to an industrial design which by publication or by public use has been made available to the public, anywhere in the world, before the filing date or, where priority is claimed, the priority date of the application for the registration of the former industrial design.

(c) Subparagraph (b) shall not apply in respect of any publication or public use which was made by the creator of the industrial design or his successor in title within a period of 12 months prior to the filing date of the application or, where priority is claimed, the priority date.

(3) Protection shall not be granted in respect of industrial designs, the publication or exploitation of which would be contrary to public order or

morality, provided that the exploitation shall not be deemed to be so contrary merely because it is prohibited by law or regulation.

CHAPTER XXII

Right to Protection

Article 85
Right to protection

(1) The exclusive right to an industrial design shall belong to the creator of the industrial design or his successor in title. Joint creators shall, unless they agree otherwise, have equal rights.
(2) Where two or more applications have been filed by different persons in respect of the same industrial design and the creators concerned created the industrial design independently of each other, the right to protection that industrial design shall belong to the applicant whose application has the earliest filing date or where priority is claimed, the earliest priority date, as long as his application is not withdrawn, considered to be withdrawn or rejected.

Article 86
Industrial designs created pursuant to a commission or by an employee

(1) Where an industrial design is created in execution of a commission or an employment contract, the right to protection for that industrial design shall belong, in absence of contractual provisions to the contrary, to the person having commissioned the work or to the employer.
(2) The employee shall have the right to equitable remuneration taking into account his salary, the economic value of the industrial design and any benefit derived from the industrial design by the employer. In the absence of agreement between the parties, the remuneration shall be fixed by the Court

Article 87
Mention of the creator of the industrial design

Any publication of the Patent Office, containing the application or the registration granted thereon, shall mention the creator or the creators of the industrial design as such, provided that any creator may request, in a declaration signed by him and filed with the Patent Office, that such publications should not mention him as creator, in which case the Patent Office shall proceed accordingly.

CHAPTER XXIII

Application for Registration

Article 88
Filing date

(1) As the filing date of the application for registration of an industrial design shall be considered the date when the Patent Office receives documents which include:

(a) the request to register an industrial design,
(b) the name and address of the applicant;
(c) the representation of the industrial design,
(d) an indication of the product or products in which the industrial design is intended to be incorporated;
(e) where priority is claimed in the application, words to that effect, together with the identification of the Patent Office with which the application whose priority is claimed ("the priority application") was filed, the filing date of the priority application and, if available, the number of the priority application;
(f) signature of the applicant.

(2) The application shall identify the creator or creators of the industrial design.
(3) Two or more industrial designs may be subject of the same application, provided that they relate to the same class of the International Classification established by the Locarno Agreement.
(4) The application shall be accompanied by the prescribed fee.

(5) The request of the application shall be in Albanian while other application materials may also be submitted in English. The Patent Office is entitled to request a translation of the submitted materials and documents into Albanian; these translations shall be submitted to the Patent Office within a set term. All further processing of the application (correspondence) shall be in Albanian.
(6) A foreign applicant (where the applicant has neither a domicile nor a real and effective industrial or commercial establishment on the territory of the Republic of Albania), may only file an application and maintain correspondence with the Patent Office through a patent attorney (trademark agent) who has been registered in the Patent Office, according to the Chapter XXIX of this Law.
(7) The Priority Right shall be known for countries party to the Paris Convention for the Protection of Industrial Property.

Article 89
Temporary protection of industrial designs exhibited at international exhibitions

(1) The applicant for registration of an industrial design who has exhibited a product or products incorporating the industrial design at an official or officially recognized international exhibition and who applies for registration of that industrial design within six months from the day on which the product or products incorporating the industrial design were first exhibited in the exhibition shall, on his request, be deemed to have applied for registration on that day.
(2) Evidence of the exhibition of products incorporating the industrial design shall be given by a certificate issued by the competent authorities of the exhibition, stating the date on which the industrial design was first shown in connection with products included in the exhibition.

Article 90
Examination as to formalities

(1) Within two months after receipt of the application, the Patent Office shall conduct a preliminary examination of the application, examine the conformity of the application with the requirements of Article 88 of this Law and in accordance with set procedure, establish the filing date of the application and if the applicant has the right of priority, the filing date of priority.
(2) If the application does not conform the prescribed requirements of Article 88 of this Law, the Patent Office shall notify the applicant specify the non-conformity and determine a term for reply. If the reply is not received in due time, or essential deficiencies are not eliminated, the application shall be considered as not filed and the applicant shall be notified of this in writing.

Article 91
Registration of the industrial design. Postponement of publication

(1) If the application has not been rejected, the Patent Office shall, on payment of the prescribed fee, register the industrial design or, in the case of Article 88(3) of this Law, the industrial designs, and issue a certificate of registration to the holder of the registration.
(2) As soon as possible after the decision to register the industrial design or industrial designs, the Patent Office shall publish the industrial design or the industrial designs in the prescribed manner.
(3) Together with the filing of the application, a request may be made for postponement of the publication of the registered industrial design or industrial designs for a period of up to 12 months from the day following the application date. In the case of such request, the Patent Office shall, upon registration, publish information on the holder of the registration. After the expiration of the period of the postponement, the registered industrial design or industrial designs shall be published unless the application has been withdrawn before the expiration of the said period.

CHAPTER XXIV

Effects of Registration

Article 92
Rights conferred by registration

(1) The holder of the registration of an industrial design shall have the right to prevent third parties from making, importing, offering to supply or distributing, or having in their possession for these purposes, any products that incorporate the registered industrial design or closely similar industrial design, when such acts are undertaken for commercial purposes.
(2) Notwithstanding paragraph (1), the holder of the registration shall not have the right referred to in that paragraph in respect of products which have been put on the market in the territory of the Republic of Albania, or in any territory specified in the Regulations, by the holder of the registration or with his express consent.
(3) The rights conferred by the registration shall not extend to equipment on ships, aircraft and any other vehicles not registered in the territory of the Republic of Albania when these temporarily enter the territory of Republic of Albania, as well as the importation of spare parts and accessories for the purpose of repairing such vehicles and the execution of repairs on such vehicles.

Article 93
Term of registration and renewal

(1) The registration is made for five years counted from the date of the registration.
(2) The registration may be renewed, on payment of the prescribed fee, for additional terms of five years each up to a total term of 25 years counted from the date of the registration.

CHAPTER XXV

License Contracts

Article 94
License contracts

(1) For the purposes of this law, "license contract" means any contract by which the holder of the registration of an industrial design ("the licensor") gives to the other party ("the licensee") his agreement for that other party to do any of the acts referred to in Article 93 of this Law.
(2) A license contract must be in writing and must be signed by the parties to the contract. Otherwise it shall not be valid.
(3) The fact that the contract has been concluded may be recorded in the Register of industrial designs on payment of the prescribed fee. The licensee shall be entitled to institute any legal proceedings concerning the license contract only if it has been recorded in the Register of industrial designs.

Article 95
Infringement proceedings

(1) The holder of the registration of an industrial design shall have the right to institute proceedings in the Court against any person who has infringed or is infringing his rights under Article 93. The holder shall have the same rights against any person who has performed acts or is performing acts which make it likely that such infringement will occur ("**imminent infringement**").
(2) (a) If the holder of the registration proves that an infringement has been committed or is being committed, the Court shall award damages and shall grant an injunction to prevent further infringement and any other remedy provided in general law.
(b) If the holder of the registration proves imminent infringement, the Court shall grant an injunction to prevent infringement and any other remedy provided in the general law.

CHAPTER XXVI

Renunciation and Invalidation

Article 96
Renunciation

(1) The holder of the registration may renounce it by written declaration submitted to the Patent Office. The renunciation shall take effect from the date of receipt of the declaration by the Patent Office. In the case of a registration covering several industrial designs, the renunciation may be in respect of all or some of the registered industrial designs.
(2) The Patent Office shall record the renunciation in the Register of industrial designs and publish it.

Article 97
Invalidation

(1) The Court may, on the request of any person, invalidate a registration on the ground that the registered industrial design is not protectable under Article 84 of this Law.
(2) Any invalidated registration shall be considered to be null and void from the date of the registration.
(3) When the decision of the Court to invalidate the registration becomes final, the Court shall notify the Patent Office of the decision in the Register of industrial designs and publish it.

PART IV

MISCELLANEOUS

CHAPTER XXVII

Patent Office

Article 98
Patent Office and its main functions

(1) The Patent Office is established by the Council of Ministers of the Republic of Albania.The Patent Office shall be a juridical unit within the structure of the Committee of Science and Technology of the Republic of Albania.The activities of the Patent Office shall be determined and regulated by this Law and the Regulation of the Patent Office.The Chairman of the Committee of Science and Technology shall appoint the Director of the Patent Office.The Patent Office shall have an own seal, which shall be used for sealing patents and certificates for the registration of trademarks, industrial designs, as well as other Patent Office documents.
(2) The Patent Office shall:
- (a) admit and examine applications of natural persons and legal entities for the legal protection of inventions, utility models, trademarks, industrial designs and appellations of origin;
- (b) grant patents and respective certificates;
- (c) organize the corresponding State Registers;
- (d) collect and maintain all the materials and documents relating to the registration of patents, utility models, trademarks, industrial designs and appellations of origin.

(3) The Patent Office shall, within its competence:
- (a) adopt instructions, official forms and explanations;
- (b) compile and publish officially all the questions that are to be published under this Law and the Regulation of the Patent Office;
- (c) advise natural persons and legal entities for a fee, and offer information on the questions relating to industrial property;
- (d) examine and register patent attorneys;

(e) cooperate with organizations of the Republic of Albania, and foreign and international organizations involved in the legal protection of industrial property.

(4) Filing of the applications of the patents, utility models, trademarks, industrial designs and appellations of origin, as well as other actions before the Patent Office relating to industrial property protection shall be subject to payment of special fees. The amount of the fee shall be fixed by the Council of Ministers of the Republic of Albania, while the procedure for payment shall be laid down by the Director of the Patent Office.

Article 99
Structure of the Patent Office

The Chairman of the Committee of Science and Technology establishes the structure of the Patent Office and appoints its staff.

Article 100
Restrictions on Patent Office employees

(1) While fulfilling their duties in the Patent Office, as well as within one year after termination of their labour relations with the Patent Office, the officials and employees of the Patent Office may not file patent applications and utility model applications. They may not, directly or indirectly (except through inheritance), acquire patents granted or to be granted by the Patent Office, as well as acquire any rights arising from a patent.

(2) With regard to patents granted or patent applications and utility model applications to be filed, the employees of the Patent Office shall not enjoy the right of priority relating to patents or applications dated earlier than one year after they have terminated their employment with the Patent Office.

Article 101
Patent Office Director

(1) The Patent Office Director shall supervise all activities and fulfil the obligations laid down in the laws on the legal protection of industrial property and in the Regulation of the Patent Office.

(2) The Patent Office Director shall have the right, under the supervision of the Committee of Science of Technology, to carry out national and international programs, to organize information exchange and to request information on issues which affect the national and international interests of the Republic of Albania in the field of legal protection of industrial property.

(3) Within the framework of this Law, the Director shall administer and be responsible for the property designated to the Patent Office and, without any specific authorization, represent the Patent Office in court, arbitrage, State institutions, as well as in relations with natural persons and legal entities.

Article 102
Patent Office responsibility

The Patent Office shall be responsible for the qualitative and timely execution of duties which are assigned to the Office by Republic of Albania laws relating to the legal protection of industrial property, as well as for the realization, under the supervision of the Committee of Science and Technology and within its competence, of State policy in the sphere of legal protection of industrial property.

Article 103
Board of Appeal

A Board of Appeal is established for the review of the disputes relating to patents, utility models, trademarks, industrial designs and appellations of origine within the structure of the Patent Office, which shall act in accordance with the corresponding regulations approved by the Committee of Science and Technology and Ministry of Justice.

Article 104
Accounts of the Patent Office

The Patent Office Director shall render an account of resources received and spent, as well as provide statistical and other information on the activities of the Patent Office to the Committee of Science and Technology of the Republic of Albania.

CHAPTER XXVIII

Representation

Article 105
Representation before the Patent Office

(1)(a) Where the applicant appoints (authorizes) a representative relating to his application, the appointment shall be expressed either in the application or in a written declaration signed by the applicant, which is to be filed with the Patent Office, indicating and the number of application.

(b) Where the owner of a patent, utility model, trademark, industrial design or appellation of origin appoints a representative relating to his patent, utility model, trademark, industrial design or appellation of origin, the appointment shall be expressed in a written declaration (authorization) signed by the owner of the patent, utility model, trademark, industrial design or appellation of origin, indicating and the number of application.

(2)(a) The applicant or the owner of the protected industrial property right may limit the powers of a representative to certain acts.

(b) Where a limitation is made subsequently to the appointment, it shall be made in a communication signed by the applicant or the owner of the protected industrially property right. This limitation shall have effect upon receipt by the Patent Office of that communication.

(3) Natural persons and legal entities whose permanent residence is not in the Republic of Albania or who do not own an enterprise within its territory, are represented before the Patent Office by professional patent attorneys.

(4) Natural persons and legal entities whose permanent residence is in the Republic of Albania or who own an enterprise within its territory, may be represented before the Patent Office directly or through their authorized employees. These employees shall not be obliged to be professional patent attorneys.

Article 106
Patent attorneys

(1) Only a professional patent attorney (hereinafter referred to as "patent attorney") register in Register of patent attorneys of the Patent Office may be an authorized representative in the matters of legal protection of industrial property rights. This provision shall not apply to persons mentioned in the Article 105 paragraph (4).

(2) Entries to be made in the Register of patent attorneys are determined by the Patent Office Director.

(3) The following shall be eligible for entering in the Register as referred to in paragraph (1) of this Article:

(a) a natural person who shall meet the following requirements:

(i) shall be a citizen of the Republic of Albania and shall have a permanent residence in the Republic of Albania;

(ii) shall be at least 30 years old;

(iii) shall have completed his/her studies at a faculty and be skillfull in English and French languages;

(iv) shall pass the examinations before a commission of experts, the members of which are affirmed by the Patent Office Director.

(b) a legal person, employing at least one person who fulfils all the conditions laid down in subparagraph (3)(a).

(4) Any patent attorney registered in the Register may request that he be deleted from the Register.

(5) The Register of the patent attorneys shall be kept in the Patent Office and shall be accessible for any interested person. The Patent Office shall regularly publish a list of patent attorneys.

Appendix D

Bilateral Agreement on Trade Relation

AGREEMENT ON TRADE RELATIONS BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ALBANIA

The United States of America and the Republic of Albania (hereinafter referred to collectively as "Parties" and individually as "Party"),

Affirming that the evolution of market-based economic institutions and the strengthening of the private sector will aid the development of mutually beneficial trade relations,

Acknowledging that the development of trade relations and direct contact between nationals and companies of both Parties will promote openness and mutual understanding,

Considering that expanded trade relations between the Parties will contribute to the general well-being of the peoples of each Party,

Recognizing that development of bilateral trade may contribute to better mutual understanding and cooperation and promote respect for internationally recognized worker rights,

Taking into account Albania's membership in the International Monetary Fund and the International Bank for Reconstruction and Development and the prospects for economic reform and restructuring of the economy,

Having agreed that economic ties are an important and necessary element in the strengthening of their bilateral relations,

Being convinced that an agreement on trade relations between the two Parties will best serve their mutual interests, and

Desiring to create a framework which will foster the development and expansion of commercial ties between their respective nationals and companies,

Have agreed as follows:

ARTICLE I

MOST FAVORED NATION AND NONDISCRIMINATORY TREATMENT

1. Each Party shall accord unconditionally to products originating in or exported to the territory of the other Party treatment no less favorable than that accorded to like products originating in or exported to the territory of any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation, including the method of levying such duties and charges;

(b) methods of payment for imports and exports, and the international transfer of such payments;

(c) rules and formalities in connection with importation and exportation, including those relating to customs clearance, transit, warehouses and transshipment;

(d) taxes and other internal charges of any kind applied directly or indirectly to imported products; and

(e) laws, regulations and requirements affecting the sale, offering for sale, purchase, transportation, distribution, storage and use of products in the domestic market.

2. Each Party shall accord to products originating in or exported to the territory of the other Party

nondiscriminatory treatment with respect to the application of quantitative restrictions and the granting of licenses.

3. Each Party shall accord to imports of products and services originating in the territory of the other Party nondiscriminatory treatment with respect to the allocation of and access to the currency needed to pay for such imports.

4. The provisions of paragraphs 1 and 2 shall not apply to:

(a) advantages accorded by either Party by virtue of such Party's full membership in a customs union or free trade area;

(b) advantages accorded to adjacent countries for the facilitation of frontier traffic;

(c) actions by either Party which are required or permitted by the General Agreement on Tariffs and Trade (th "GATT") (or by any joint action or decision of the Contracting Parties to the GATT) during such time as such Party is a Contracting Party to the GATT and special advantages accorded by virtue of the GATT; and

(d) actions taken under Article XI (Market Disruption) of this Agreement.

5. The provisions of paragraph 2 of this Article shall not apply to Albanian exports of textiles and textile products.

ARTICLE II

MARKET ACCESS FOR PRODUCTS AND SERVICES

1. Each Party shall administer all tariff and nontariff measures affecting trade in a manner which affords, with respect to both third country and domestic competitors, meaningful competitive opportunities for products and services of the other Party.

2. Accordingly, neither Party shall impose, directly or indirectly, on the products of the other Party imported into its territory, internal taxes or charges of any kind in excess of those applied, directly or indirectly, to like domestic products.

3. Each Party shall accord to products originating in the territory of the other Party treatment no less favorable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution, storage or use.

4. The charges and measures described in paragraphs 2 and 3 of this Article should not be applied to imported or domestic products so as to afford protection to domestic production.

5. The Parties shall ensure that technical regulations and standards are not prepared, adopted or applied with a view to creating obstacles to international trade or to protect domestic production. Furthermore, each

Party shall accord products imported from the territory of the other Party treatment no less favorable than that accorded to like domestic products and to like products originating in any third country in relation to such technical regulations or standards, including conformity testing and certification.

6. The Government of the Republic of Albania shall accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System, and shall take all necessary measures to implement entry into force of such Conventions with respect to the Republic of Albania. The United States of America shall endeavor to provide technical assistance, as appropriate, for the implementation of such measures.

ARTICLE III

GENERAL OBLIGATIONS WITH RESPECT TO TRADE

1. The Parties agree to maintain a satisfactory balance of market access opportunities, including through concessions in trade in products and services and through the satisfactory reciprocation of reductions in tariffs and nontariff barriers to trade resulting from multilateral negotiations.

2. Trade in products and services shall be effected b contracts between nationals and companies of both Parties

concluded on the basis of nondiscrimination and in the exercise of their independent commercial judgment and on the basis of customary commercial considerations such as price, quality, availability, delivery, and terms of payment.

3. Neither Party shall require or encourage its nationals or companies to engage in barter or countertrade transactions. Nevertheless, where nationals or companies decide to resort to barter or countertrade operations, the Parties will encourage them to furnish to each other all necessary information to facilitate the transaction.

ARTICLE IV

EXPANSION AND PROMOTION OF TRADE

1. The Parties affirm their desire to expand trade in products and services consistent with the terms of this Agreement. They shall take appropriate measures to encourage and facilitate trade in goods and services and to secure favorable conditions for long-term development of trade relations between their respective nationals and companies.

2. The Parties shall take appropriate measures to encourage the expansion of commercial contacts with a view to increasing trade. In this regard, the Government of the Republic of Albania expects that, during the term of this Agreement, nationals and companies of the Republic of Albania shall increase their orders in the United States for

products and services, while the United States expects that the effect of this Agreement shall be to encourage increased purchases by nationals and companies of the United States of products and services from the Republic of Albania. Toward this end, the Parties shall publicize this Agreement and ensure that it is made available to all interested parties.

3. Each Party shall encourage and facilitate the holding of trade promotional events such as fairs, exhibitions, missions and seminars in its territory and in the territory of the other Party. Similarly, each Party shall encourage and facilitate the participation of its respective nationals and companies in such events. Subject to the laws in force within their respective territories, the Parties agree to allow the import and re-export on a duty free basis of all articles for use in such events, provided that such articles are not sold or otherwise transferred.

ARTICLE V

GOVERNMENT COMMERCIAL OFFICES

1. Subject to its laws and regulations governing foreign missions, each Party shall allow government commercial offices to hire directly host-country nationals and, subject to immigration laws and procedures, third-country nationals.

2. Each Party shall ensure unhindered access of host-country nationals to government commercial offices of the other Party.

3. Each Party shall encourage the participation of its nationals and companies in the activities of the other Party's government commercial offices, especially with respect to events held on the premise of such commercial offices.

4. Each Party shall encourage and facilitate access by government commercial office personnel of the other Party to host-country officials at both the national and subnational level, and representatives of nationals and companies of the host Party.

ARTICLE VI

BUSINESS FACILITATION

1. Each Party shall afford commercial representations of the other Party fair and equitable treatment with respect to the conduct of their operations.

2. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit the establishment within its territory of commercial representations of nationals and companies of the other Party and shall accord such representations treatment at least as favorable as that accorded to commercial

representations of nationals and companies of third countries.

3. Subject to its laws and procedures governing immigration and foreign missions, each Party shall permit such commercial representations established in its territory to hire directly employees who are nationals of either Party or of third countries and to compensate such employees on terms and in a currency that is mutually agreed between the parties, consistent with such Party's minimum wage laws.

4. Each Party shall permit commercial representations of the other Party to import and use in accordance with normal commercial practices, office and other equipment, such as typewriters, photocopiers, computers and telefax machines in connection with the conduct of their activities in the territory of such Party.

5. Each Party shall permit, on a nondiscriminatory basis and at nondiscriminatory prices (where such prices are set or controlled by the government), commercial representations of the other Party access to and use of office space and living accommodations, whether or not designated for use by foreigners. The terms and conditions of such access and use shall in no event be on a basis less favorable than that accorded to commercial representations of nationals and companies of third countries.

6. Subject to its laws and procedures governing immigration, each Party shall permit nationals and companies

of the other Party to engage agents, consultants and distributors of either Party and of third countries on prices and terms mutually agreed between the parties.

7. Subject to its immigration laws and procedures, each Party shall permit nationals and companies of the other Party to serve as agents, consultants and distributors of nationals and companies of either Party and of third countries on prices and terms mutually agreed between the parties.

8. Each Party shall permit nationals and companies of the other Party to advertise their products and services (a) through direct agreement with the advertising media, including television, radio, print and billboard, and (b) by direct mail, including the use of enclosed envelopes and cards preaddressed to that national or company.

9. Each Party shall encourage direct contact, and permit direct sales, between nationals and companies of the other Party and end-users and other customers of their goods and services, and with agencies and organizations whose decisions will affect potential sales.

10. Each Party shall permit nationals and companies of the other Party to conduct market studies, either directly or by contract, within its territory. To facilitate the conduct of market research, each Party shall upon request make available non-confidential, non-proprietary information

within its possession to nationals and companies of the other Party engaged in such efforts.

11. Each Party shall provide nondiscriminatory access to governmentally-provided products and services, including public utilities, to nationals and companies of the other Party in connection with the operation of their commercial representations.

12. Each Party shall permit commercial representations to stock an adequate supply of samples and replacement parts for aftersales service on a non-commercial basis.

13. Neither Party shall impose measures which unreasonably impair contractual or property rights or other interests acquired within its territory by nationals and companies of the other Party.

ARTICLE VII

TRANSPARENCY

1. Each Party shall make available publicly on a timely basis all laws and regulations related to commercial activity, including trade, investment, taxation, banking, insurance and other financial services, transport and labor. Each Party shall also make such information available in reading rooms in its own capital and in the capital of the other Party.

2. Each Party shall provide nationals and companies o the other Party with access to available non-confidential,

non-proprietary data on the national economy and individual sectors, including information on foreign trade.

3. Each Party shall allow the other Party the opportunity to comment on the formulation of rules and regulations which affect the conduct of business activities.

ARTICLE VIII

FINANCIAL PROVISIONS RELATING TO TRADE IN PRODUCTS AND SERVICES

1. Unless otherwise agreed between the parties to individual transactions, all commercial transactions between nationals and companies of the Parties shall be made in United States dollars or any other currency that may be designated from time to time by the International Monetary Fund as being a freely usable currency.

2. Neither Party shall restrict the transfer from its territory of convertible currencies or deposits, or instruments representative thereof, obtained in connection with trade in products and services by nationals and companies of the other Party.

3. Nationals and companies of a Party holding currency of the other Party received in an authorized manner may deposit such currency in financial institutions located in the territory of the other Party and may maintain and use such currency for local expenses.

4. Without derogation from paragraphs 2 or 3 of this Article, in connection with trade in products and services,

each Party shall grant to nationals and companies of the other Party the better of most-favored-nation or national treatment with respect to:

(a) opening and maintaining accounts, in both local and foreign currency, and having access to funds deposited, in financial institutions located in the territory of the Party;

(b) payments, remittances and transfers of convertible currencies, or financial instruments representative thereof, between the territories of the two Parties, as well as between the territory of that Party and that of any third country;

(c) rates of exchange and related matters, including access to freely usable currencies, such as through currency auctions; and

(d) the receipt and use of local currency and its use for local expense.

ARTICLE IX

PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

1. Each Party shall provide adequate and effective protection and enforcement for patents, trademarks, copyrights, trade secrets, industrial designs and layout designs for integrated circuits. Each Party agrees to adhere to the Paris Convention for the Protection of Industrial Property as revised at Stockholm in 1967, the

Berne Convention for the Protection of Literary and Artistic Works as revised at Paris in 1971, the Universal Copyright Convention of September 6, 1952 as revised at Paris on July 24, 1971, and the Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971).

2. To provide adequate and effective protection and enforcement of intellectual property rights, each Party shall, inter alia, observe the following commitments:

(a) Copyright and related rights

(i) Each Party shall protect the works listed in Article 2 of the Berne Convention (Paris 1971) and any other works now known or later developed, that embody original expressions within the meaning of the Berne Convention, not limited to the following:

(1) all types of computer programs (including application programs and operating systems) expressed in any language, whether in source or object code which shall be protected as literary works and works created by or with the use of computers; and

(2) collections or compilations of protected or unprotected material or data whether in print, machine readable or any other medium, including data bases, which shall be protected if they constitute intellectual creation by reason of the selection, coordination, or arrangement of their contents.

(ii) Rights in works protected pursuant to paragraph 2(a)(i) of this Article shall include, inter alia, the following:

(1) the right to import or authorize the importation into the territory of the Party of lawfully made copies of the work as well as the right to prevent the importation into the territory of the Party of copies of the work made without the authorization of the right-holder;

(2) the right to make the first public distribution of the original or each authorized copy of a work by sale, rental, or otherwise; and

(3) the right to make a public communication of a work (e.g., to perform, display, project, exhibit, broadcast, transmit, or retransmit a work); the term "public" shall include:

(A) communicating a work in a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) communicating or transmitting a work, a performance, or a display of a work, in any form, or by means of any device or process to a place specified in clause 2(a)(ii)(3)(A) or to the public, regardless of whether the members of the public capable of receiving such communications can receive them in the same place or separate places and at the same time or at different times.

(iii) Each Party shall extend the protection afforded under paragraph 2(a)(ii) of this Article to authors of the other Party, whether they are natural persons or, where the other Party's domestic law so provides, companies and to their successors in title.

(iv) Each Party shall permit protected rights under paragraph 2(a)(ii) of this Article to be freely and separately exploitable and transferable. Each Party shall also permit assignees and exclusive licensees to enjoy all rights of their assignors and licensors acquired through voluntary agreements, and be entitled to enjoy and exercise their acquired exclusive rights.

(v) In cases where a Party measures the term of protection of a work from other than the life of the author, the term of protection shall be no less than 50 years from authorized publication, or, failing such authorized publication within 50 years from the making of the work, 50 years after the making.

(vi) Each Party shall confine any limitations or exceptions to the rights provided under paragraph 2(a)(ii) of this Article (including any limitations or exceptions that restrict such rights to "public" activity) to clearly and carefully defined special cases which do not impair an actual or potential market for or the value of a protected work.

(vii) Each Party shall ensure that any compulsory or non-voluntary license (or any restriction of exclusive rights to a right of remuneration) shall provide means to ensure payment and remittance of royalties at a level consistent with what would be negotiated on a voluntary basis.

(viii) Each Party shall, at a minimum, extend to producers of sound recordings the exclusive rights to do or to authorize the following:

(1) to reproduce the recording by any means or process, in whole or in part; and

(2) to exercise the importation and exclusive distribution and rental rights provided in paragraphs 2(a)(ii)(1) and (2) of this Article.

(ix) Paragraphs 2(a)(iii), 2(a)(iv) and 2(a)(vi) of this Article shall apply mutatis mutandis to sound recordings.

(x) Each Party shall:

(1) protect sound recordings for a term of at least 50 years from publication; and

(2) grant the right to make the first public distribution of the original or each authorized sound recording by sale, rental, or otherwise except that the first sale of the original or such sound recording shall not exhaust the rental or importation right therein (the "rental right" shall mean the right to authorize or prohibit the

disposal of the possession of the original or copies for direct or indirect commercial advantage).

(xi) Parties shall not subject the acquisition and validity of intellectual property rights in sound recordings to any formalities, and protection shall arise automatically upon creation of the sound recording.

(b) Trademarks

(i) Protectable Subject Matter

(1) Trademarks shall consist of at least any sign, words, including personal names, designs, letters, numerals, colors, the shape of goods or of their packaging, provided that the mark is capable of distinguishing the goods or services of one national or company from those of other nationals or companies.

(2) The term "trademark" shall include service marks, collective and certification marks.

(ii) Acquisition of Rights

(1) A trademark right may be acquired by registration or by use. Each Party shall provide a system for the registration of trademarks. Use of a trademark may be required as a prerequisite for registration.

(2) Each Party shall publish each trademark either before it is registered or promptly after it is registered and shall afford other parties a reasonable opportunity to petition to cancel the registration. In

addition, each Party may afford an opportunity for the other Party to oppose the registration of a trademark.

(3) The nature of the goods or services to which a trademark is to be applied shall in no case form an obstacle to registration of the trademark.

(iii) Rights Conferred

(1) The owner of a registered trademark shall have exclusive rights therein. He shall be entitled to prevent all third parties not having his consent from using in commerce identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is protected, where such use would result in a likelihood of confusion.

(2) Each Party shall refuse to register or shall cancel the registration and prohibit use of a trademark likely to cause confusion with a trademark of another which is considered to be well-known. A Party may not require that the reputation of the trademark extend beyond the sector of the public which normally deals with the relevant goods or services.

(3) The owner of a trademark shall be entitled to take action against any unauthorized use which constitutes an act of unfair competition or passing off.

(iv) Term of Protection

The registration of a trademark shall be indefinitely renewable for terms of no less than 10 years

when conditions for renewal have been met. Initial registration of a trademark shall be for a term of at least 10 years.

(v) Requirement of Use

(1) If use of a registered mark is required to maintain trademark rights, the registration may be cancelled only after an uninterrupted period of at least two years of non-use, unless legitimate reasons for non-use exist. Use of the trademark with the consent of the owner shall be recognized as use of the trademark for the purpose of maintaining the registration.

(2) Legitimate reasons for non-use shall include non-use due to circumstances arising independently of the will of the trademark holder (such as import restrictions on or other government requirements for products protected by the trademark) which constitute an obstacle to the use of the mark.

(vi) Other Requirements

The use of a trademark in commerce shall not be encumbered by special requirements, such as use which reduces the function of a trademark as an indication of source or use with another trademark.

(vii) Compulsory Licensing

Compulsory licensing of trademarks shall not be permitted.

(viii) Transfer

Trademark registrations may be transferred.

(c) Patents

(i) Patentable Subject Matter

(1) Patents shall be available for all inventions, whether they concern products or processes, in all fields of technology.

(2) Parties may exclude from patentability any invention or discovery which is useful solely in the utilization of special nuclear material or atomic energy in an atomic weapon.

(ii) Rights Conferred

(1) A patent shall confer the right to prevent others not having the patent owner's consent from making, using, or selling the subject matter of the patent. In the case of a patented process, the patent confers the right to prevent others not having consent from using that process and from using, selling, or importing at least the product obtained directly by that process.

(2) Where the subject matter of a patent is a process for obtaining a product, each Party shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer at least in one of the following situations:

(A) the product is new, or

(B) a substantial likelihood exists that the product was made by the process and the patent owner has been unable through reasonable efforts to determine the process actually used.

In gathering and evaluation of evidence to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account.

(3) A patent may only be revoked on grounds that would have justified a refusal to grant the patent.

(iii) Exceptions

Each Party may provide limited exceptions to the exclusive rights conferred by a patent, such as for acts done for experimental purposes, provided that the exceptions do not significantly prejudice the economic interests of the right-holder.

(iv) Term of Protection

Each Party shall provide a term of protection of at least 20 years from the date of filing of the patent application or 17 years from the date of grant of the patent. Each Party is encouraged to extend the term of patent protection, in appropriate cases, to compensate for delays caused by regulatory approval processes.

(v) Transitional Protection

A Party shall provide transitional protection for chemical products, including pharmaceuticals and

agricultural chemicals, for which it did not provide product patent protection prior to its implementation of this Agreement, provided the following conditions are satisfied:

(1) the subject matter to which the product relates will become patentable after implementation of this Agreement;

(2) the product is subject to premarket regulatory review in the territory of the other Party and a patent has been issued for the product by the other Party or an application is pending for the product with the other Party prior to the date on which the subject matter to which the product relates becomes patentable in the territory of the Party providing transitional protection; and

(3) the product has not been marketed in the territory of the Party providing such transitional protection.

The owner of a patent or of a pending application for a product satisfying the conditions set forth above shall have the right to submit a copy of the patent or provide notification of the existence of a pending application with the other Party, to the Party providing transitional protection. These submissions and notifications shall take place any time after the implementation of the new Albanian patent law, and Albanian authorities shall accept such submissions for a period of no less than 1 year from the date of implementation of the law. In the case of

a pending application, the applicant shall notify the competent Albanian authorities of the issuance of a patent based on his application within six months of the date of grant by the other Party. The Party providing transitional protection shall limit the right to make, use, or sell the product in its territory to such owner for a term to expire with that of the patent submitted. Such protection may be implemented through a confirmation patent system.

(vi) Compulsory Licenses

(1) Each Party may limit the patent owner's exclusive rights through compulsory licenses but only:

(A) to remedy an adjudicated complaint based on competition laws;

(B) to address, only during its existence, a declared national emergency; and

(C) to enable compliance with national air pollutant standards, where compulsory licenses are essential to such compliance.

(2) Where the law of a Party allows for the grant of compulsory licenses, such licenses shall be granted in a manner which minimizes distortions of trade, and the following provisions shall be respected:

(A) Compulsory licenses shall be non-exclusive and non-assignable except with that part of the enterprise or goodwill which exploits such license.

(B) The payment of remuneration to the

patent owner adequate to compensate the patent owner fully for the license shall be required, except for compulsory licenses to remedy adjudicated violations of competition law.

(C) Each case involving the possible grant of a compulsory license shall be considered on its individual merits.

(D) Any compulsory license shall be revoked when the circumstances which led to its granting cease to exist, taking into account the legitimate interests of the patent owner and of the licensee. The continued existence of these circumstances shall be reviewed upon request of the patent owner.

(E) Judicial review shall be available for:

(1) decisions to grant compulsory licenses, except in the instance of a declared national emergency,

(2) decisions to continue compulsory licenses, and

(3) the compensation provided for compulsory licenses.

(d) Layout-Designs of Semiconductor Chips

(i) Subject Matter for Protection

(1) Each Party shall provide protection for original layout-designs incorporated in a semiconductor

chip, however the layout-design might be fixed or encoded.

(2) Each Party may condition protection on fixation or registration of the layout-designs. If registration is required, applicants shall be given at least two years from first commercial exploitation of the layout-design in which to apply. A Party which requires deposits of identifying material or other material related to the layout-design shall not require applicants to disclose confidential or proprietary information unless it is essential to allow identification of the layout-design.

(ii) Rights Acquired

(1) Each Party shall provide to owners of rights in integrated circuit lay-out designs of the other Party the exclusive right to do or to authorize the following:

(A) to reproduce the layout-design;

(B) to incorporate the layout-design in a semiconductor chip; and

(C) to import or distribute a semiconductor chip incorporating the layout-design and products including such chips.

(2) The conditions set out in paragraph (c)(v) of this Article shall apply, mutatis mutandis, to the grant of any compulsory licenses for layout-designs.

(3) Neither Party is required to extend protection to layout-designs that are commonplace in the

industry at the time of their creation or to layout-designs that are exclusively dictated by the functions of the circuit to which they apply.

(4) Each Party may exempt the following from liability under its law:

(A) reproduction of a layout-design for purposes of teaching, analysis, or evaluation in the course of preparation of a layout-design that is itself original;

(B) importation and distribution of semiconductor chips, incorporating a protected layout-design, which were sold by or with the consent of the owner of the layout-design; and

(C) importation or distribution up to the point of notice of a semiconductor chip incorporating a protected layout-design and products incorporating such chips by a person who establishes that he did not know, and had no reasonable grounds to believe, that the layout-design was protected, provided that, with respect to stock on hand or purchased at the time notice is received, such person may import or distribute only such stock but is liable for a reasonable royalty on the sale of each item after notice is received.

(iii) Term of Protection

The term of protection for the lay-out design shall extend for at least ten years from the date of first commercial exploitation or the date of registration of the

design, if required, whichever is earlier.

(e) Acts Contrary to Honest Commercial Practices and the Protection of Trade Secrets

(i) In the course of ensuring effective protection against unfair competition as provided for in Article 10 bis of the Paris Convention, each Party shall provide in its domestic law and practice the legal means for nationals and companies to prevent trade secrets from being disclosed to, acquired by, or used by others without the consent of the trade secret owner in a manner contrary to honest commercial practices insofar as such information:

(1) is not, as a body or in the precise configuration and assembly of its components, generally known or readily ascertainable;

(2) has actual or potential commercial value because it is not generally known or readily ascertainable; and

(3) has been subject to reasonable steps under the circumstances to keep it secret.

(ii) Neither Party shall limit the duration of protection for trade secrets so long as the conditions in paragraph 2(e)(i) of this Article exist.

(iii) Licensing

Neither Party shall discourage or impede voluntary licensing of trade secrets by imposing excessive

or discriminatory conditions on such licenses or conditions which dilute the value of trade secrets.

(iv) Government Use

(1) If a Party requires, as a condition of approving the marketing of pharmaceutical or agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, that Party shall protect such data against unfair commercial use. Further, each Party shall protect such data against disclosure except where necessary to protect the public or unless steps are taken to ensure that the data is protected against unfair commercial use.

(2) Unless the national or company submitting the information agrees, the data may not be relied upon for the approval of competing products for a reasonable period of time, taking into account the efforts involved in the origination of the data, their nature, and the expenditure involved in their preparation, and such period of time shall generally be not less than five years from the date of marketing approval.

(3) Where a Party relies upon a marketing approval granted by the other Party or a country other than the United States or Albania, the reasonable period of exclusive use of the data submitted in connection with

obtaining the approval relied upon shall commence with the date of the first marketing approval relied upon.

(f) Enforcement of Intellectual Property Rights

(i) Each Party shall protect intellectual property rights covered by this Article by means of civil law, criminal law, or administrative law or a combination thereof in conformity with the provisions below. Each Party shall provide effective procedures, internally and at the border, to protect these intellectual property rights against any act of infringement, and effective remedies to stop and prevent infringements and to effectively deter further infringements. These procedures shall be applied in such a manner as to avoid the creation of obstacles to legitimate trade and provide for safeguards against abuse.

(ii) Procedures concerning the enforcement of intellectual property rights shall be fair and equitable.

(iii) Decisions on the merits of a case shall, as a general rule, be in writing and reasoned. They shall be made known at least to the parties to the dispute without undue delay.

(iv) Each Party shall provide an opportunity for judicial review of final administrative decisions on the merits of an action concerning the protection of an intellectual property right. Subject to jurisdictional provisions in national laws concerning the importance of a case, an opportunity for judicial review of the legal

aspects of initial judicial decisions on the merits of a case concerning the protection of an intellectual property right shall also be provided.

(v) Remedies against a Party

Notwithstanding the other provisions of paragraph 2(f), when a Party is sued for infringement of an intellectual property right as a result of the use of that right by or for the government, the Party may limit remedies against the government to payment of full compensation to the right-holder.

3. Each Party agrees to submit for enactment no later than December 31, 1993, the legislation necessary to carry out the obligations of this Article, and to exert its best efforts to enact and implement this legislation, as well as to adhere to the Conventions mentioned in paragraph 1, by that date.

4. For purposes of this Article:

(a) "right-holder," means the right-holder himself, any other natural or legal person authorized by him who are exclusive licensees of the right, or other authorized persons, including federations and associations, having legal standing under domestic law to assert such rights; and

(b) "A manner contrary to honest commercial practice" is understood to encompass, inter alia, practices such as theft, bribery, breach of contract, inducement to

breach, electronic and other forms of commercial espionage, and includes the acquisition of trade secrets by third parties who knew, or had reasonable grounds to know, that such practices were involved in the acquisition.

ARTICLE X

AREAS FOR FURTHER ECONOMIC AND TECHNICAL COOPERATION

1. For the purpose of further developing bilateral trade and providing for a steady increase in the exchange of products and services, both Parties shall strive to achieve mutually acceptable agreements on taxation and investment issues, including the repatriation of profits and transfer of capital.

2. The Parties shall take appropriate steps to foster economic and technical cooperation on as broad a base as possible in all fields deemed to be in their mutual interest, including with respect to statistics and standards.

3. The Parties, taking into account the growing economic significance of service industries, agree to consult on matters affecting the conduct of service business between the two countries and particular matters of mutual interest relating to individual service sectors with the objective, among others, of attaining maximum possible market access and liberalization.

ARTICLE XI

MARKET DISRUPTION SAFEGUARDS

1. The Parties agree to consult promptly at the request of either Party whenever either actual or prospective imports of products originating in the territory or the other Party cause or threaten to cause or significantly contribute to market disruption. Market disruption exists within a domestic industry whenever imports of an article, like or directly competitive with an article produced by such domestic industry, are increasing rapidly, either absolutely or relatively, so as to be a significant cause of material injury, or threat thereof, to such domestic industry.

2. Determination of market disruption or threat thereof by the importing Party shall be based upon a good faith application of its laws and on an affirmative finding of relevant facts and on their examination. The importing Party, in determining whether market disruption exists, may consider, among other factors: the volume of imports of the merchandise which is the subject of the inquiry; the effect of imports of the merchandise on prices in the territory of the importing Party for like or directly competitive articles; the impact of imports of such merchandise on domestic producers of like or directly competitive articles; and evidence of disruptive pricing practices or other efforts to unfairly manage trade patterns.

arbitral awards, or other liability in the territory of the other Party with respect to commercial transactions; they also shall not claim or enjoy immunities from taxation with respect to commercial transactions, except as may be provided in other bilateral agreements.

2. The Parties encourage the adoption of arbitration for the settlement of disputes arising out of commercial transactions concluded between nationals or companies of the United States and nationals or companies of the Republic of Albania. Such arbitration may be provided for by agreements in contracts between such nationals and companies, or in separate written agreements between them.

3. The parties may provide for arbitration under any internationally recognized arbitration rules, including the UNCITRAL Rules of December 15, 1976 and any modifications thereto, in which case the parties should designate an Appointing Authority under said rules in a country other than the United States or the Republic of Albania.

4. Unless otherwise agreed between the parties, the parties should specify as the place of arbitration a country other than the United States or the Republic of Albania, that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

5. Nothing in this Article shall be construed to prevent, and the Parties shall not prohibit, the parties

from agreeing upon any other form of arbitration or on the law to be applied in such arbitration, or other forms of dispute settlement which they mutually prefer and agree best suits their particular needs.

6. Each Party shall ensure that an effective means exists within its territory for the recognition and enforcement of arbitral awards.

ARTICLE XIII

NATIONAL SECURITY

The provisions of this Agreement shall not limit the right of either Party to take any action for the protection of its security interests.

ARTICLE XIV

CONSULTATIONS

1. The Parties agree to set up a Joint Commercial Commission which will, subject to the terms of reference of its establishment, foster economic cooperation and the expansion of trade under this Agreement and review periodically the operation of this Agreement and make recommendations for achieving its objectives.

2. The Parties agree to consult promptly through appropriate channels at the request of either Party to discuss any matter concerning the interpretation or

3. The consultations provided for in paragraph 1 of this Article shall have the objectives of (a) presenting and examining the factors relating to such imports that may be causing or threatening to cause or significantly contributing to market disruption, and (b) finding means of preventing or remedying such market disruptions. Such consultations shall be concluded within sixty days from the date of the request for such consultation, unless the Parties otherwise agree.

4. Unless a different solution is mutually agreed upon during the consultations, and notwithstanding paragraphs 1 and 2 of Article I, the importing Party may (a) impose quantitative import limitations, tariff measures or any other restrictions or measures it deems appropriate to prevent or remedy threatened or actual market disruption, and (b) take appropriate measures to ensure that imports from the territory of the other Party comply with such quantitative limitations or other restrictions. In this event, the other Party shall be free to deviate from its obligations under this Agreement with respect to substantially equivalent trade.

5. Where in the judgment of the importing Party, emergency action is necessary to prevent or remedy such market disruption, the importing Party may take such action at any time and without prior consultations provided that

such consultations shall be requested immediately thereafter.

6. In the selection of measures under this Article, the Parties shall endeavor to give priority to those which cause the least disturbance to the achievement of the goals of this Agreement.

7. Each Party shall ensure that its domestic procedures for determining market disruption are transparent and afford affected parties an opportunity to submit their views.

8. The Parties acknowledge that the elaboration of the market disruption safeguard provisions in this Article is without prejudice to the right of either Party to apply its laws and regulations applicable to trade in textiles and textile products and its laws and regulations applicable to unfair trade, including antidumping and countervailing duty laws.

ARTICLE XII

DISPUTE SETTLEMENT

1. Nationals and companies of either Party shall be accorded national treatment with respect to access to all courts and administrative bodies in the territory of the other Party, as plaintiffs, defendants or otherwise. They shall not claim or enjoy immunity from suit or execution of judgment, proceedings for the recognition and enforcement of

implementation of this Agreement and other relevant aspects of the relations between the Parties.

ARTICLE XV

DEFINITIONS

As used in this Agreement, the terms set forth below shall have the following meaning:

(a) "company," means any kind of corporation, company, association, sole proprietorship or other organization legally constituted under the laws and regulations of a Party or a political subdivision thereof, whether or not organized for pecuniary gain or privately or governmentally owned; provided that, either Party reserves the right to deny any company the advantages of this Agreement if nationals of any third country control such a company and, in the case of a company of the other Party, that company has no substantial business activities in the territory of the other Party or is controlled by nationals of a third country with which the denying country does not maintain normal economic relations;

(b) "commercial representation," means a representation of a company of a Party;

(c) "national," means a natural person who is a national of a Party under its applicable law.

ARTICLE XVI

GENERAL EXCEPTIONS

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prohibit the adoption or enforcement by a Party of:

(a) measures necessary to secure compliance with laws or regulations which are not contrary to the purposes of this Agreement;

(b) measures for the protection of intellectual property rights and the prevention of deceptive practices as set out in Article IX of this Agreement, provided that such measures shall be related to the extent of any injury suffered or the prevention of injury; or

(c) any other measure referred to in Article XX of the GATT.

2. Nothing in this Agreement limits the application of any existing or future agreement between the Parties on trade in textiles and textile products.

ARTICLE XVII

ENTRY INTO FORCE, TERM, SUSPENSION AND TERMINATION

1. This Agreement (including its side letters which are an integral part of the Agreement) shall enter into force on the date of exchange of written notices of acceptance by the two governments and shall remain in force as provided in paragraphs 2 and 3 of this Article.

2. (a) The initial term of this Agreement shall be three years, subject to subparagraph (b) and (c) of this paragraph.

(b) If either Party encounters or foresees a problem concerning its domestic legal authority to carry out any of its obligations under this Agreement, such Party shall request immediate consultations with the other Party. Once consultations have been requested, the other Party shall enter into such consultations as soon as possible concerning the circumstances that have arisen with a view to finding a solution to avoid action under subparagraph (c).

(c) If either Party does not have domestic legal authority to carry out is obligations under this Agreement, either Party may suspend the application of this Agreement or, with the agreement of the other Party, any part of this Agreement. In that event, the Parties will, to the fullest extent practicable and consistent with domestic law, seek to minimize disruption to existing trade relations between the two countries.

3. This Agreement shall be extended for successive terms of three years each unless either Party has given written notice to the other Party of its intent to terminate this Agreement at least 30 days prior to the expiration of the then current term.

IN WITNESS THEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington on this 14th day of May 1992, in two original copies in the English language. An Albanian language text shall be prepared which shall be considered equally authentic upon an exchange of diplomatic notes confirming its conformity with the English language text.

FOR THE UNITED STATES AMERICA:

FOR THE REPUBLIC OF ALBANIA:

APPENDIX 2

Report by CEELI and CLDP on "How to Negotiate, Structure and Document International Joint Ventures"

REPORT BY

THE AMERICAN BAR ASSOCIATION
CENTRAL AND EAST EUROPEAN LAW INITIATIVE

AND

THE UNITED STATES DEPARTMENT OF COMMERCE
COMMERCIAL LAW DEVELOPMENT PROGRAM

ON THEIR
JOINT TRAINING SEMINAR AND WORKSHOP ON

HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT
INTERNATIONAL JOINT VENTURES

Tirana, Albania, July 13 - 16, 1993

TABLE OF CONTENTS

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SUMMARY AND ANALYSIS

I. INTRODUCTION

This report describes and analyzes the July 1993 training seminar and workshop jointly sponsored by the Central and East European Law Initiative (CEELI) of the American Bar Association and the Commercial Law Development Program (CLDP) of the U.S. Department of Commerce, on "How to Negotiate, Structure and Document International Joint Ventures."

This workshop represents, of course, only one element in the commercial law assistance programs that CEELI and CLDP operate in Albania. In retrospect, and as is discussed further below, the workshop reinforced what these groups have learned from their previous work there: that the Albanians, while often unschooled in Western legal and business concepts, are bright, capable people with the ability to absorb quickly a broad range of sophisticated concepts. Moreover, Albanian professionals are, for the most part, extremely interested in learning more (on both formal and informal bases) about issues and subjects that will enable them to perform more effectively in their work. They also very much appreciate the opportunity to meet with Westerners, if only for short periods such as over the course of a workshop. Finally, the positive impact of the workshop on the Albanian participants demonstrates the wisdom of substituting participatory, inter-active teaching methods for the traditional lecture format.

II. PROGRAM PLANNING AND IMPLEMENTATION

A. Albanian Requests and Need for Workshop

CEELI and CLDP both have been active in providing technical legal assistance in Albania in the past. For example, during the past year, CEELI has posted a series of Legal Specialists to Albania's Ministry of Trade and Foreign Economic Cooperation. These specialists have assisted in Albanian efforts to establish the legal infrastructure and obtain the expertise needed to promote trade in the international community and attract foreign investment to Albania.

Similarly, pursuant to requests from the Ministry of Trade, since October 1992 CLDP has provided assistance to the Ministry in the area of international economic agreements. CLDP has been sending a series of Resident Advisors to the Ministry to provide advice on issues such as foreign investment, unfair trade practices, GATT, GSP, and membership in the IMF. CLDP also sponsored two workshops earlier this year, in direct response to Ministry requests: a one-day arbitration workshop that was attended

by 15 Ministry officials; and a three-day drafting workshop attended by 30 attorneys and officials of various ministries and Parliament.

In early 1993, A. David Meyer, counsel to an American chemical manufacturing company who also serves as outside corporate counsel for a group of firms engaged in international and domestic business ventures, served for two months as a CEELI Legal Specialist at the Ministry. During Mr. Meyer's tenure there, Vice-Minister Naske Afezolli and a number of other Ministry officials expressed a strong interest in learning more about international joint ventures -- a key issue for the Albanians as they seek to expand their trade and business contacts abroad and attract foreign investors. Moreover, as a direct outgrowth of its earlier work, CLDP earlier this year was asked to provide assistance on the subject of negotiations -- also a key issue as the Albanians expand their commercial dealings with the West. CEELI and CLDP thus agreed to jointly sponsor a training workshop that would address both the substance of international joint ventures, and how to negotiate such ventures.

B. Selection of Dates, Times, and Location

After agreeing to jointly sponsor the workshop, CEELI and CLDP Washington staff and in-country personnel consulted Vice-Minister Afezolli and other Albanian officials regarding logistical issues, including the dates and times of day for the workshop, and the location for the workshop. The Albanians, as well as USAID/Tirana, agreed that the proposed dates in early July would be suitable, and advised CEELI/CLDP that 9:30 a.m. to 2:30 p.m. would fit well into the Albanian working day (which runs from 7:00 a.m. to 3:00 p.m.). Additionally, the Ministry of Trade offered to host the workshop in a large conference/class room, which was furnished with desks, a chalkboard, and podium. The room was provided free of charge.

C. Developing the Goals, Content, and Structure of the Workshop, and Selecting Faculty Members

CEELI's and CLDP's past work in Albania and discussions with Albanian officials indicated that what was desired and needed was a course that would provide an Albanian official or lawyer with the ability and confidence to negotiate and structure an international joint venture. Accordingly, CEELI and CLDP designed the course to include both (1) a basic overview of the types of legal and business issues that should be considered when confronting an international joint venture; and (2) "hands-on," participatory, sessions designed to train the Albanians in how to negotiate and document an international joint venture. In keeping with this design, the number of invitations and manner of their distribution aimed to attract a group of no more than 20 to 30 participants.

To ensure an appropriate faculty-student ratio, four faculty members (plus a moderator) were retained. Brief biographical sketches of all faculty members are included in the written workshop materials, which are enclosed. All faculty members had substantive knowledge of international joint ventures, and experience negotiating, structuring, and documenting such ventures. Additionally, A. David Meyer, the program chair, and Linda Wells and Nancy Eller, faculty members, had previously had experience working with Albanians, in Albania, and thus were sensitive to their needs and desires. Claudio Cocuzza, the Italian solicitor who filled out the roster, had previously taught at legal seminars and conferences, and his expertise in Italian corporate law was extremely useful in view of the reliance, in Albania, on Italian law and procedure. Additionally, Mr. Cocuzza's fluency in English was an invaluable asset.[1]

D. Pre-Workshop Preparations in the U.S. and Tirana

Faculty members were selected in May, and preparation of the enclosed written workshop materials began at that time. Included are (1) the 11-page outline of the workshop (including the workshop schedule and substantive course outline, as well as descriptions of CEELI and CLDP, and biographical sketches of all workshop faculty); (2) a series of "handouts," which were distributed as the workshop progressed; and (3) a two-page evaluation form, which was distributed on the last day of the workshop.[2]

All English language written materials were completed in the United States in mid-June, and one copy of each document was transmitted to CEELI personnel in Tirana for translation into Albanian. Additionally, CEELI in-country personnel in advance of the workshop retained five Albanians to act as interpreters during the workshop. Finally, CEELI in-country personnel, working with CEELI and CLDP staff in Washington and with Albanian contacts in Tirana, prepared an invitation list, had invitations (and maps, showing the location of the workshop) printed, and distributed the invitations and course outline by hand, to officials at various government ministries, private practitioners, members of the Law Faculty, and Tirana-based representatives of foreign assistance

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[1]CEELI and CLDP are indebted to representatives of the International Development Law Institute for their assistance in connection with this workshop. Not only did IDLI officials provide CEELI/CLDP with the names of potential Italian faculty members, but they also provided many helpful suggestions related to the structure and teaching techniques used in the workshop.

[2]Enclosed are both the English and Albanian language versions of the materials distributed during the workshop.

programs and agencies.[3]

While CEELI has word processing and copying facilities at its office in Tirana, to minimize last-minute duplicating, copies of all English language materials were made in Washington, and carried by CEELI and CLDP staff to Tirana.

E. The Final Product: The Workshop Itself

The 20 to 30 participants who attended the workshop each day included mid- to senior level officials of various government ministries, including Trade; Commerce; Construction; Agriculture; Industry & Mining; and Transportation. Additionally, several foreign consultants attended (e.g., a representative of the World Bank, attorneys with "Volunteers in Overseas Assistance," and an outside consultant to the Ministry of Agriculture), and Minister of Trade Artan Hoxha attended the last portion of the program and the awarding of certificates of completion.[4] The average age of attendees appeared to be early to mid-30's. A listing of the participants is enclosed.

On the first morning of the workshop, English and Albanian language versions of the written materials were distributed to each participant, in soft-cover folders. Writing pads and pens also were provided.[5]

As noted above, the workshop was intended both to alert the students to the legal and business issues that arise in international joint ventures, and to provide them with as much "hands on," participatory training and experience in negotiating and documenting such transactions as possible. Accordingly, time was divided between more traditional "teaching" (i.e., presentation of information to the students) and "role play," inter-active training exercises.

The structure of the workshop ultimately achieved the goal of ongoing student participation, interaction and, apparently, understanding. While the written materials were fairly voluminous, and addressed a wide variety of sophisticated legal and business issues, to avoid overwhelming the participants some of these issues were not covered in

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[3]A copy of the invitation and map is enclosed.

[4]Additionally, Aleksandra Braginski of USAID/Washington and Deedee Blane of USAID/Tirana attended portions of the workshop.

[5]Workshop faculty members spoke in English. Their comments then were interpreted into Albanian by the five Albanian interpreters (each of the interpreters worked for all four days of the workshop, switching off amongst themselves as needed).

class. Also, during the workshop sessions, faculty members distilled the written information into simple, straightforward, and clear presentations, emphasizing key points on a "flip chart" displayed on an easel. Not only was class size conducive to active involvement, but lecturing was kept to a minimum, in favor of more inter-active teaching methods. Accordingly, desks were arranged in a circle on the floor of the classroom, and faculty members taught from the floor, rather than from the podium. This format encouraged questions and answers by, and discussion with, class members.

Class involvement was highest during the last several days of the workshop, when the students "acted out" the joint venture case study that had been developed by program chair David Meyer. The study, which was distributed on the first day of the workshop, was comprised of a factual scenario and various related documents (including a sample joint venture agreement). After reviewing the study, workshop participants were divided into two groups, each representing one of the negotiating parties described in the case study, and in animated sessions, they "negotiated" a sample joint venture agreement.[6]

III. POST-PROGRAM ISSUES

A. Participant Reaction and Suggestions

Faculty members and CEELI and CLDP organizers attending the workshop closely observed participants' reactions to the program, and during breaks in the sessions discussed with participants their thoughts on it, so that as it progressed the program could be tailored to participants' needs and interests. Discussions with the participants during and after the workshop indicated that they were pleased with both the content and structure of the program. In this regard, the level of enthusiasm and degree of interest in the workshop was evidenced by the high ratio of participants who made the effort -- during the work day -- to attend virtually the entire program.

The evaluation forms that sought participants' views on both the substance and structure of the workshop also reflect the participants' unanimous view that the subject of the workshop was very well-chosen, and their sense of having learned a substantial amount about how to negotiate and structure international joint ventures.[7] The evaluations also reflect participants' general satisfaction with the level of difficulty and

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[6]At the conclusion of the final workshop session, "Certificates of Completion" were given to all participants, during a brief "graduation" ceremony. A copy of a sample certificate is enclosed. The certificates were very well-received by participants.

[7]27 evaluation forms were completed; copies are enclosed.

detail at which the workshop was conducted;[8] its structure and organization, including its emphasis on practical issues and hands-on, inter-active exercises; the written materials; and the faculty members, as well as their interest in and enthusiasm for additional technical legal assistance (in the form of meetings, workshops, written materials etc.).

As for logistical issues, the participant evaluations provided little consensus regarding the most appropriate time of year for such programs. However, participants generally agreed that the time of day and location of this program was good.

Several suggestions for future programs recurred in various participant evaluations. First, various participants suggested that in the future, more "promotion" of workshop programs be undertaken, in order to increase participation and broaden it to include a wider cross-section of Albanian professionals. Second, some participants suggested that written materials for workshops be distributed in advance. Third, several participants felt that the workshop should have addressed a "real life" joint venture between Albania and a foreign investor.

B. Faculty Reaction and Suggestions

As it does for all workshops, CEELI asked workshop faculty to complete an evaluation form upon conclusion of the program. Copies of the faculty responses to the form are enclosed. As the responses indicate, faculty reaction to the program was uniformly positive, on a variety of issues. For example, faculty members were pleased with the logistical aspects of the workshop, including technical support, lodging, and the physical setting for the program. Faculty members also were pleased with the participatory, inter-active format, and with the program's clearly positive impact on participants. They also noted the positive impact of having had the opportunity to "fine tune" the workshop sessions (in terms of format, topics covered, depth of coverage of particular topics, etc.) in response to the needs and interests of the participants.

Faculty suggestions for future programs included holding such programs in more "neutral" locations (e.g., one of the local hotels), so that they are not associated with any particular ministry; and, increasing program publicity (hopefully, with the help of Albanian nationals), in order to attract a more diverse student body.

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[8]Additionally, the questions, comments, and conduct of the students during the workshop indicated that it was taught at the appropriate level of difficulty. Indeed, the faculty members were gratified with the response shown by the students, and with their apparent ability to absorb the information provided and to utilize it in the negotiating exercises.

C. Program Impact

The workshop impacted the participants in a variety of significant, identifiable ways. First, in terms of substance, the program and accompanying materials fulfilled the organizers' goals of providing the participants with practical, usable information and skills, specifically: (1) the basic knowledge and written material necessary to enable participants to approach an international joint venture in an informed, methodical, and analytical manner, and to identify key legal and business issues raised by such a transaction; (2) a familiarity with basic negotiating concepts, which are key to enabling the Albanians to bargain on a more equal footing with their foreign counterparts. Perhaps most importantly, however, by engaging the participants in role-playing negotiating sessions, the workshop allowed them to apply both the substantive knowledge and negotiating skills that the workshop sought to teach. Through application, what otherwise might have been regarded as dry, brittle concepts took on life, became interesting, and presumably were better understood and retained by the participants.

Another significant impact of the program was the way in which it transformed quiet, previously unrelated individuals into an inter-active, interested, questioning, cohesive, and confident group. In this regard, the dramatic change in the students over the course of the four-day program cannot be over-emphasized. By the end of the week, for example, the members of the group were not being taught only by the faculty, but were teaching and exchanging ideas with one another. The idea that learning can be more than simply sitting in a room and taking notes (which then are taken home and never again used) was amply demonstrated by the program, and it is likely that for the vast majority of the participants, this was a novel idea. Moreover, by the last day, the students obviously had not only learned a lot on a substantive level, but had opened up tremendously and gained confidence in their own abilities as a result of the inter-active program format. Clearly, not only the program participants' newly-gained substantive knowledge, but their newly-gained confidence, will serve them well as they deal increasingly with the outside world.

D. Follow-Up Activity in Albania

As noted above, this workshop was not an isolated activity, but rather is one element of the CEELI and CLDP commercial law assistance programs for Albania. Accordingly, what CEELI and CLDP learned from the workshop -- both positive and negative -- will be used when developing future programs. Also, over the coming months the workshop will be followed with additional activities in Albania, such as (1) contacting workshop participants to discuss their ideas for future in-country work; (2) holding informal group discussions/seminars on some of the topics touched on in the workshop, as well as other commercial law topics that are relevant to the day-to-day work of

Albanian officials and lawyers; and (3) possibly repeating the workshop or following it up with a similar program in 1994.[9] The workshop also may serve as a model for similar programs for other countries in the region.

[9]Finally, because the inter-active, participatory format employed in the Albanian workshop has been used successfully in other countries in Central and Eastern Europe, the program sponsors will continue to use it for future programs in the region.

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

A TRAINING SEMINAR AND WORKSHOP
SPONSORED BY

THE AMERICAN BAR ASSOCIATION
CENTRAL AND EAST EUROPEAN LAW INITIATIVE

AND

THE UNITED STATES DEPARTMENT OF COMMERCE
COMMERCIAL LAW DEVELOPMENT PROGRAM

TIRANA, ALBANIA
13-16 JULY, 1993

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

WORKSHOP FACULTY

ROLAND BASSETT, who serves as the moderator of the workshop, recently arrived in Tirana to serve as CEELI's commercial law liaison. Mr. Bassett graduated from the law school at Tulane University in Louisiana. He is a senior partner with a law firm in Texas, where his practice includes commercial legal matters and business litigation. He also has extensive experience in alternative dispute resolution matters.

CLAUDIO COCUZZA is the Milan partner of an Italian law firm based in Rome and Milan. He specializes in international corporate law, mergers and acquisitions, EEC, and Italian antitrust law. After graduating in law from the University of Siena, Mr. Cocuzza received a Master of Laws from the University of Pennsylvania Law School in Philadelphia and practiced law as a foreign associate in 1988 and 1989 in the Washington, D.C. office of a large American law firm. He is a member of the Milan Bar.

NANCY ELLER is a lawyer in the London office of a large American law firm where she specializes in international corporate finance transactions, including cross-border joint ventures, share and asset acquisitions, secured and unsecured asset-based financing and public and private placements of debt and equity securities. Ms. Eller, who received her law degree from Cornell University, practiced with her firm's New York office for several years prior to her transfer to London.

A. DAVID MEYER (Program Chair) is Vice President and General Counsel of a U.S chemical manufacturer with an international engineering and technical services subsidiary, and also serves as outside corporate counsel for a select group of companies engaged in international and domestic business ventures. During the past 15 years, Mr. Meyer has negotiated joint ventures and other strategic alliances with businesses in North and South America, Europe, and the Far East. From January to March of 1993, Mr. Meyer served as a CEELI Legal Specialist in the Ministry of Trade and Foreign Economic Cooperation of the Republic of Albania, where he advised the Ministry on joint ventures, foreign investment laws, and other investment and trade matters. Mr. Meyer holds Bachelor of Arts, Master of Business Administration and Doctor of Jurisprudence degrees from Indiana University and is a member of several international legal and business organizations.

LINDA WELLS is the Director of CLDP. Prior to becoming the first director of CLDP in February of 1992, Ms. Wells was Senior Commercial Counsel of the Overseas Private Investment Corporation (OPIC), an independent agency of the United States

Government that finances and insures private U.S. investment in developing economies. While at OPIC, Ms. Wells was responsible for advising the agency and its clients on legal matters related to Central and Eastern Europe. Ms. Wells received her law degree in 1983 from the Law School of the University of Pennsylvania, where she was the Executive Editor of the Journal of International Business Law. She also holds a bachelor's degree in political science from the University of Southern California.

The faculty wishes to express their appreciation to Lisa B. Dickieson, an attorney with CEELI's Washington, D.C. office, Susan K. Gurley, Deputy Director of CLDP, James F. Prusky, of CLDP, and Greg Lusitana, one of CEELI's attorney liaisons in Tirana, for their assistance in developing, structuring, and organizing the workshop.

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

WORKSHOP SPONSORS

THE CENTRAL AND EAST EUROPEAN LAW INITIATIVE (CEELI) is a project of the American Bar Association, and is funded in part by the United States Agency for International Development. CEELI offers American and West European legal expertise and assistance to countries that are in the process of modifying or restructuring their laws or legal systems. It does so in various ways, including long-term "liaisons" and "legal specialists;" long-term legal training; assessments of draft laws; and technical legal assistance workshops. CEELI has been active in Albania since 1991, on many issues. It currently has posted in Tirana two long-term liaisons, Mr. Greg Lusitana and Mr. Roland Bassett, as well as a legal specialist to the Ministry of Trade and Foreign Economic Cooperation, and a judicial training specialist.

THE COMMERCIAL LAW DEVELOPMENT PROGRAM (CLDP) for Central and Eastern Europe, a Department of Commerce initiative funded in part by the United States Agency for International Development, is one component of the U.S. Government effort to support the economic and political reforms underway in Central and Eastern Europe. CLDP assistance focuses on commercial laws, regulations and administrative practices affecting domestic and foreign investment, privatization, commercial dispute resolution, real property rights, intellectual property rights, and government procurement. CLDP has been operating in Albania since 1991. Current programming includes the Resident Advisor Program, which places U.S. advisors in the region to work with the host government's ministries and universities.

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

WORKSHOP SCHEDULE AND OUTLINE
TUESDAY-FRIDAY
13-16 JULY, 1993
THE MINISTRY OF TRADE AND FOREIGN ECONOMIC COOPERATION
TIRANA, ALBANIA

DAY 1	**TUESDAY**	**13 JULY, 1993**	**0930 - 1430**
DAY 2	**WEDNESDAY**	**14 JULY, 1993**	**0930 - 1430**
DAY 3	**THURSDAY**	**15 JULY, 1993**	**0930 - 1430**
DAY 4	**FRIDAY**	**16 JULY, 1993**	**0930 - 1230**

NOTE: **A RECEPTION WILL FOLLOW THE CONCLUSION OF THE WORKSHOP ON FRIDAY**

DAYS 1-2
TUESDAY-WEDNESDAY

SESSION I.	**OVERVIEW OF INTERNATIONAL JOINT VENTURES**
SESSION II.	**NEGOTIATING THE JOINT VENTURE**
SESSION III.	**STRUCTURING AND DOCUMENTING THE JOINT VENTURE**

DAYS 3-4
THURSDAY-FRIDAY

SESSION IV.	**FINANCING THE JOINT VENTURE**
SESSION V.	**MANAGING THE JOINT VENTURE**
SESSION VI.	**RESOLVING JOINT VENTURE DISPUTES**

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION I. OVERVIEW OF INTERNATIONAL JOINT VENTURES

- Introduction of Sponsors and Faculty
- Purpose and Goals of the Workshop
- Types of International Joint Ventures and Other Cooperative Relationships
    - Joint Venture Defined
    - Equity Joint Ventures
    - Contract Joint Ventures
    - Other Kinds of Cooperative Relationships and Strategic Alliances
- Selecting the Legal Form of the Joint Venture and the Legal Form of the Joint Venturers
    - What Are the Alternatives?
        - Impact of Albanian Company Law
    - How Do You Decide?
- Why Joint Venture?
    - A Foreign Businessman's View of International Joint Ventures -- Objectives of the Foreign Investor
    - The Host Country Partner's View of International Joint Ventures -- Objectives of the Host Country Partner
- Introduction to the Case Study -- Durres Battery Company [HANDOUTS 1 AND 2]
- Panel Discussion -- Questions and Answers -- Negotiating Exercises
    - Identifying Objectives of the Durres Battery Company Joint Venturers
    - Selecting the Legal Form of the Durres Battery Company Joint Venture and Form of Organization of the Joint Venturers

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION II. NEGOTIATING THE JOINT VENTURE

- Introduction to the Session
- Overview of How to Negotiate a Joint Venture
    - Introduction to the Art of Business Negotiations
    - The Purpose of Negotiations -- Getting to "Yes" and Creating "Win-Win" Relationships
    - Preparation for Negotiations
    - Negotiation Strategies and Tactics
        - Who Should Conduct the Negotiations?
        - The Process of Negotiations
    - Techniques for Resolving Impasses
    - The Impact of Culture on Negotiations
- Panel Discussion -- Questions and Answers -- Negotiating Exercises

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION III. STRUCTURING AND DOCUMENTING THE JOINT VENTURE

- Introduction to the Session
- Overview of Key Joint Venture Documents [HANDOUT 3]
    - Description and Purpose of Basic Documents
    - Description and Purpose of Ancillary Documents
- Overview of Letters of Intent [HANDOUT 4]
    - Description and Purpose of Letters of Intent
        - Key Paragraphs
    - Legal Considerations
        - How Binding is a Letter of Intent?
- Overview of Key Joint Venture Agreement Clauses
    - Clauses Related to Formation of the Joint Venture
    - Clauses Related to Financing the Joint Venture
    - Clauses Related to Managing the Joint Venture
    - Clauses Related to Transferring Ownership and Terminating the Joint Venture
    - Clauses Related to Resolving Joint Venture Disputes
    - Other Miscellaneous Clauses
- Panel Discussion -- Questions and Answers -- Negotiating Exercises
    - Identifying Key Joint Venture Documents for the Durres Battery Company Joint Venture and Problems in the Case Study Joint Venture Agreement

- **Identifying Key Topics to be Included in a Letter of Intent for the Durres Battery Company Joint Venture [HANDOUT 5]**

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION IV. FINANCING THE JOINT VENTURE

- Introduction to the Session
- Acquisition of Joint Venture Assets
    - What Assets Will the Joint Venture Need?
    - How Will the Joint Venture Acquire its Assets?
    - From Whom Will the Joint Venture Acquire its Assets?
    - How Will the Joint Venture Pay for its Assets?
- Financing the Joint Venture with Capital Contributions
    - Initial Capital Contributions
    - Additional Capital Contributions
    - Cash Contributions
    - Contributions of Real Property
    - Contributions of Machinery, Equipment and Other Tangible Personal Property
    - Contributions of Intangibles
    - Contributions of Services
    - Valuation of Capital Contributions
- Capital Shares -- What Should Each Joint Venturer Receive in Return for its Contributions to the Joint Venture?
    - Classes of Shares
        - How Many Classes -- One, Two, or More?

- **What Kinds of Rights and Preferences Should Each Class Have?**
- **How Many Shares of Each Class Should be Authorized and Issued?**

- **Allocation of Shares to the Joint Venturers**
- **How Do You Decide?**

- **Financing the Joint Venture with Debt**
- **Loans from Third Parties**
- **Loans from the Joint Venturers**

- **Dividend Policy -- Financing the Joint Venture with Retained Earnings**
- **Expectations of the Parties**
- **Who Establishes Dividend Policy?**
- **What Are the Options?**
- **Accounting Issues**
- **Determination of Profits and Cash Available for Distribution**

- **Panel Discussion -- Questions and Answers -- Negotiating Exercises**
- **Identifying and Valuing the Contributions of the Durres Battery Company Joint Venturers**
- **Establishing a Dividend Policy for the Durres Battery Company Joint Venture**

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION V. MANAGING THE JOINT VENTURE

- Introduction to the Session
- Decision-Making-How Will the Joint Venture be Managed, Directed and Controlled?
    - Who Participates in Decision-Making?
    - Who Will Make Day to Day Decisions?
    - Who Will Make Fundamental or Extraordinary Decisions?
    - Roles and Functions of the Management, Supervisory Councils, Assemblies, Shareholders, Directors, Officers, Nonexecutive Employees, Boards, Committees, and Outside Auditors
    - Majority Rule Versus Minority Rights
        - Should the Majority Always Rule?
        - How Do You Protect the Interests of the Minority Joint Venture Partner?
    - Impact of Company Law on Shared Decision-Making
    - Techniques for Shared Decision-Making
        - Two or More Classes of Shares
        - Special Voting Rights
        - Other Techniques
    - Key Issues and Decisions Requiring Unanimity or a Special Majority [HANDOUT 6]
    - Techniques for Resolving Business Deadlocks
- Panel Discussion -- Questions and Answers -- Negotiating Exercises
    - Identifying and Negotiating Key Decisions Requiring Unanimity or an

Extraordinary Majority and the Appropriate Decisionmakers

- **Other Management and Control Exercises**

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

SESSION VI. RESOLVING JOINT VENTURE DISPUTES

- Introduction to the Session
- The Importance of Choice of Law and Language in International Joint Ventures
- Overview of Dispute Resolution Methods and Mechanisms
    - Negotiation
    - Referral to a Higher Joint Venture Authority
    - Mediation (Conciliation)
    - Arbitration
    - Other Alternative Dispute Resolution Mechanisms
    - Litigation
- Arbitration versus Litigation
    - Advantages of Litigation
    - Disadvantages of Litigation
    - Advantages of Arbitration
    - Disadvantages of Arbitration
- Institutional Arbitration and Ad Hoc Arbitration
    - Institutional Arbitration Defined
    - Ad Hoc Arbitration Defined
    - Advantages and Disadvantages
- Overview of Major International Arbitration Institutions and Regimes
    - ICSID

- **International Chamber of Commerce**
- **American Arbitration Association**
- **London Court of International Arbitration**
- **Stockholm Chamber of Commerce**
- **Other Arbitration Institutions**
    - **Italian Arbitration Association**
- **UNCITRAL Arbitration Rules**

- **The Legally Binding Effect of Arbitration Awards**
    - **1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**
    - **How Final is an Arbitration Award?**

- **How to Draft an Arbitration Clause [HANDOUT 7]**

- **Panel Discussion -- Questions and Answers -- Negotiating Exercises**
    - **What Law(s) Should or Will Apply to the Durres Battery Company Joint Venture?**
    - **How and Where Should the Durres Battery Company Joint Venture Resolve Future Disputes?**

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SEMINAR KUALIFIKIMI I SPONSORIZUAR NGA

SHOQATA AMERIKANE E AVOKATURES
INICIATIVA PER TE DREJTEN NE EVROPEN QENDRORE DHE LINDORE
DHE
DEPARTAMENTI AMERIKAN I TREGTISE
PROGRAMI I ZHVILLIMIT TE SE DREJTES TREGTARE

TIRANE, SHQIPERI
13-16 KORRIK, 1993

BISEDIMET, STRUKTURA DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SPONSORIZUESIT E SEMINARIT

INICIATIVA E SE DREJTES NE EVROPEN QENDRORE DHE LINDORE (IDEQL/CEELI) është projekt i Shoqatës Amerikane të Avokaturës, (IDEQL), i financuar pjeserisht nga Agjencia per Zhvillimin Nderkombetar, ofron ekspertizën ligjore dhe asistencën e SHBA dhe Evropës Perëndimore për vendet që janë në procesin e ndryshimit ose rihartimit të ligjeve ose sistemeve ligjore të tyre. Ajo e bën këtë në mënyra të ndryshme duke përfshirë "ndërlidhësit" afatgjatë dhe "specialistët ligjorë", kualifikimin ligjor afatgjatë, vlerësimet e projekt-ligjeve dhe seminaret për asistencën teknike ligjore. IDEQL ka filluar të veprojë në Shqipëri që më 1991, për shumë çështje. Ajo tani ka në Tiranë dy ndërlidhës afatgjatë, Z.Greg Lusitana dhe Z. Roland Bassett si dhe një specialist ligjor në Ministrinë e Tregtisë dhe Bashkëpunimit Ekonomik me Jashtë, dhe një specialist për kualifikimin për çështjet juridike.

PROGRAMI I ZHVILLIMIT TE SE DREJTES TREGTARE (PZHDT/CLDP) për Evropën Lindore dhe Qendrore, një Departament i Iniciativës Tregtare, i financuar pjesërisht nga Agjencia për Zhvillimin Ndërkombëtar, është pjesë e përpjekjes së Qeverisë Amerikane për të përkrahur reformat ekonomike dhe politike që po zbatohen në Evropën Qendrore dhe Lindore. Asistenca e PZHQD-së përqëndrohet në ligjet dhe rregulloret tregtare si dhe praktikat administrative që ndikojnë në investimet vendase dhe të huaja, privatizimin, zgjidhjen e mosmarrëveshjeve tregtare, të drejtat mbi pronën e patundshme, të drejtat e potencialit intelektual dhe arritjet shtetërore. PZHDT e ka filluar veprimtarinë në Shqipëri që më 1991. Programi i tanishëm përfshin Programin për Këshilltarin Rezident që i vendos Këshilltarët amerikanë në terren për të punuar me ministritë dhe universitetet e shtetit pritës.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

DREJTUESIT/ ORGANIZATORET SHKENCORE TE SEMINARIT

ROLAND BASSETT, i cili punon si organizator i seminarit,ka ardhur kohët e fundit në Tiranë për të punuar si ndërlidhës i së drejtës tregtare për IDEQL/CEELI. Z. Bassett ka mbaruar për drejtësi në Universitetin e Tulanës në Luisiana. Ai është bashkëpunëtor i lartë në një firmë juristësh në Teksas, dhe puna e tij atje përfshin çështjet ligjore tregtare dhe paditë e biznesit. Ai ka gjithashtu një përvojë të gjerë në çështjet për alternativat e zgjidhjes së mosmarrëveshjeve.

KLAUDIO KOKUZA është partneri milanez i një firme italiane të së drejtës, me qendër në Rome dhe Milano. Ai është specialist për të drejtën ndërkombëtare të korporatave, bashkimet dhe sigurimet e kapitalit, bashkëpunimin Ekonomik Evropian dhe të drejtën Italiane. Pas mbarimit për drejtësi në Universitetin e Sienës, Z. Kokuza mori gradën shkencore Master of Laws në fushën e legjislacionit nga Universiteti i Shkollës së Drejtësisë të Pensilvenias në Filadelfia dhe e ushtroi këtë profesion si bashkëpunëtor i huaj në 1988 dhe 1989 në Washington, D.C., në zyrat e një firme të madhe amerikane të së drejtës. Ai është anëtar i Avokaturës Italiane.

NANCY ELLER e ka marrë titullin e saj për drejtësi në Universitetin e Kornelit në Nju Jork. Ajo ka punuar në zyrat e një firme të madhe amerikane të drejtësisë në Nju Jork. Tani ajo punon në zyrat e kësaj firme në Londër. Në firmë ajo ka punuar për realizimin e shumë transaksioneve tregtare, duke përfshirë ndërmarrjet e përbashkëta dhe transaksionet financiare të korporatave.

A.DAVID MEJER (Kryetar i Programit) është Zëvendës President dhe Këshilltar i Përgjithshëm i ndërmarrjes amerikane të prodhimit të lëndëve kimike. Ajo ka filialet e saj në vende të ndryshme të botës, të cilat kryejnë shërbime inxhinjerike dhe teknike. Z.Mejer punon edhe si këshilltar i jashtëm korporativ për një grup të zgjedhur kompanish të cilat merren me sipërmarrjet e biznesit brenda vendit dhe në vende të ndryshme të botës. Gjatë 15 viteve të fundit, Z.Mejer ka ndërmjetësuar për formimin e ndërmarrjeve të përbashkëta dhe aleancave të tjera strategjike me bizneset e Amerikës Veriore dhe Jugore, Evropës dhe Lindjes së Largët. Nga janari deri në mars të këtij viti, Z.Mejer ka shërbyer si specialist i IDEQL për problemet ligjore në Ministrinë e Tregtisë dhe të Bashkëpunimit Ekonomik me Jashtë të Republikës së Shqipërisë. Ai ka qenë këshilltar pranë Ministrit për ndërmarrjet e përbashkëta, ligjet mbi investimet e huaja si dhe për probleme të tjera të investimeve dhe tregtisë. Z. Mejer mban tituj shkencor si Bachelor of Arts, Master of Business Administration dhe Doktor i Jurisprudencës të cilat i ka fituar në Universitetin e Indianës. Ai është anëtar i disa organizatave ndërkombëtare ligjore dhe biznesi.

LINDA UELLS është Drejtoreshë e PZHDT–së. Para se të bëhej drejtoresha e parë e PZHDT–së në shkurt 1992, Zonja Uells ka qenë Këshilltare e Lartë Tregtare e Korporatës Private të Investimeve Jashtë Amerikës, një agjenci e pavarur e qeverisë së Shteteve të Bashkuara që financon dhe siguron investime private amerikane për ekonomitë në zhvillim. Në korporatën e siperpërmendur Zonja Uells ishte këshilltare e agjencisë dhe e klientëve të saj për çështje ligjore të Evropës Qendrore dhe Lindore. Zonja Uells e ka marrë gradën e saj shkencore për drejtësi më 1983, nga Shkolla e Drejtësisë në Universitetin e Pensilvanisë, ku ajo ishte Redaktore Ekzekutive e Revistës së të Drejtës Ndërkombëtare të Biznesit. Ajo gjithashtu ka gradë shkemcore në shkencat politike nga Universiteti i Kalifornisë Jugore.

Organizatorët dëshirojnë të shprehin vlerësimin e tyre për Liza B.Dikison, juristë në zyrat e IDEQL–së në Uashington D.C., Suzanë B.Gërlin dhe Xheims F.Pruskin, juristë pranë PZHDT–së dhe Greg Lusitanën, njeri prej juristë ndërlidhës të IDEQL–së në Tiranë, për ndihmën e tyre për zhvillimin, ndërtimin dhe organizimin e seminarit.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

PROGRAMI DHE ORARI I SEMINARIT
E MARTE – E PREMTE
13–16 KORRIK 1993

MINISTRIA E TREGTISE DHE E BASHKEPUNIMIT EKONOMIK ME JASHTE
TIRANE, SHQIPERI

DITA 1	E MARTE	13 KORRIK 1993	0930–1430
DITA 2	E MERKURE	14 KORRIK 1993	0930–1430
DITA 3	E ENJTE	15 KORRIK 1993	0930–1430
DITA 4	E PREMTE	16 KORRIK 1993	0930–1230

SHENIM : ME RASTIN E PERFUNDIMIT TE SEMINARIT ORGANIZOHET NJE PRITJE TE PREMTEN.

DITET 1–2
E MARTE – E MERKURE

SEANCA I VESHTRIM I PERGJITHSHEM MBI NDERMARRJET E PERBASHKETA NDERKOMBETARE
SEANCA II BISEDIMET PER NDERMARRJEN E PERBASHKET
SEANCA III STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJES SE PERBASHKET.

DITET 3–4
E ENJTE – E PREMTE

SEANCA IV FINANCIMI I NDERMARRJES SE PERBASHKET
SEANCA V MANAXHIMI I NDERMARRJES SE PERBASHKET
SEANCA VI ZGJIDHJA E MOSMARREVESHJEVE TE NDERMARRJES SE PERBASHKET.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SEANCA E PARE : VESHTRIM I PERGJITHSHEM MBI NDERMARRJET E PERBASHKETA NDERKOMBETARE

- Prezantimi i sponsorizuesve dhe organizatorëve/drejtuesve shkencorë
- Qëllimi dhe synimet e seminarit.
- Llojet e ndërmarrjeve të përbashkëta ndërkombëtare dhe lidhjeve të Tjera të Bashkëpunimit.
  - Përkufizimi i ndërmarrjes së përbashkët.
  - Ndërmarrje të përbashkëta me të drejta të barabarta.
  - Ndërmarrjet e përbashkëta me kontratë.
  - Lloje të tjera lidhjesh bashkëpunimi dhe aleancash Strategjike.
- Zgjedhja e formës ligjore të ndërmarrjes së përbashkët dhe forma ligjore e ndërmarrësve të përbashkët.
  - Cilat janë alternativat ?
  - Ndikimi i ligjit shqiptar për kompanitë.
  - Si të vendosim ?
- Përse ndërmarrje të përbashkët ?
  - Pikëpamja e një biznesmeni të huaj për ndërmarrjet e përbashkëta ndërkombëtare – Objektivat e investitorit të huaj.
  - këpamja e partnerit të vendit pritës/organizator mbi ndërmattjet e dërmarrjet e përbashkëta ndërkombë - Objectivat e partnerit në vendin pritës/organizator.
- Paraqitja e Studimit të Rastit–Shoqëria e kompleksit blegtoral Durrës.
- Diskutim i lirë – Pyetje dhe Përgjigje – Ushtrimi i negociatave.
  - Përcaktimi i objektivave të ndërmarrësve të përbashkët të Shoqërisë së kompleksit blegtoral Durrës.
  - Zgjedhja e formës ligjore të kompanisë së përbashkët të kompleksit blegtoral Durrës dhe forma e organizimit të ndërmarrësve të përbashkët.

NEGOCIATAT, STRUKTURIMI DHE DOKUMETACIONI
I NDERMARRJEVE TE PERBASHKETA

SEANCA E DYTE : NEGOCIATAT PER NDERMARRJEN E PERBASHKET

- *Hapja e seancës*
- Veshtrim i përgjithshëm për mënyrën e bisedimeve për një ndërmarrje të përbashkët.
  - Hyrje në artin e bisedimeve të biznesit.
  - Qëllimi i bisedimeve – Arrija tek "Po–ja" dhe krijimi i lidhjeve "fitim–fitim".
  - Ndikimi i dallimeve kulturore në bisedime.
  - Variante të ndryshme.
    - Varianti anglez–amerikan (common law).
    - Varianti evropian (e drejta civile).
    - Një variant shqiptar.
  - Përgatija për bisedime
  - Strategjitë dhe taktikat e bisedimeve.

    Kush duhet t'i zhvillojë bisedimet.
    - Procesi i bisedimeve.
  - Teknikat për rrugëdalje në rast ngecje të bisedimeve.
  - Diskutim i lirë – Pyetje dhe përgjigje – Ushtrimi i bisedimeve

"NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE"

SEANCA E TRETE : STRUKTURIMI DHE HARTIMI I DOKUMENTACIONIT TE NDERMARRJES SE PERBASHKET

- Hapja e seancës
- Vështrim i përgjithshëm mbi dokumetacionin kryesor të ndërmarrjes së përbashkët.
  - Përmbajtja dhe qëllimi i dokumentacionit bazë.
  - Përmbajtja dhe qëllimi i dokumentacionit ndihmës.
- Vështrim i përgjithshëm mbi Letrat e qëllimit për marrëveshje
  - Përmbajtja dhe qëllimi i letrave të qëllimit për marrëveshje.
  - Paragrafët kryesorë.
  - Vlerësimet ligjore.
  - Sa detyruese është një letër e qëllimit për marrëveshje.
- Vështrim i përgjithshëm mbi aktet kryesore të marrëveshjes për ndërmarrjen e përbashkët.
  - Aktet për formimin e ndërmarrjes së përbashkët.
  - Aktet për financimin e ndërmarrjes së përbashkët.
  - Aktet për manaxhimin e ndërmarrjes së përbashkët.
  - Aktet për transferimin e pronësisë dhe përfundimin e ndërmarrjes së përbashkët.
  - Aktet për zgjidhjen e mosmarrëveshjeve.
  - Aktet të tjera të ndryshme.
- Diskutim i lirë – Pyetje dhe përgjigje – Ushtrimi i bisedimeve.
  - Përcaktimi i dokumentacionit kryesor të ndërmarrjes së përbashkët për shoqërinë e përbashkët të kompleksit blegtoral Durrës dhe problemet në marrëveshjen për ndërmarrjen e përbashkët të rastit në analizë.

- Përcaktimi i çështjeve kryesore që duhet të përfshihen në një letër të qëllimit për marrëveshje për shoqërinë e përbashkët të kompleksit blegtoral Durrës.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SEANCA E KATERT : FINANCIMI I NDERMARRJES SE PERBASHKET

- Hapja e seancës
- Sigurimi i aktiveve të ndërmarrjes së përbashkët.
  - Për çfarë aktivesh ka nevojë ndërmarrja e përbashkët?
  - Si do t'i sigurojë ndërmarrja e përbashkët aktivet e saj?
  - Nga kush do t'i sigurojë ndërmarrja e përbashkët aktivet?
  - Si do të paguajë ndërmarrja e përbashkët aktivet e saj?
- Financimi i ndërmarrjes së pëbashkët me kontribut në kapital.
  - Kontributi me kapital fillestar.
  - Kontributi me kapital shtesë.
  - Kontributi me kesh.
  - Kontributi me pronë të patundshme.
  - Kontributi me makineri, paisje dhe pronë tjetër personale materiale.
  - Kontributi jomaterial.
  - Kontributi me shërbime.
  - Vlerësimi/ lloogaritja e kontributit kapital.
- Ndarja e kapitalit – Çfarë duhet të marrë çdo ndërmarrës i përbashkët si shpërblim për kontributin në ndërmarrjen e përbashkët?
  - Klasat e aksioneve/ndarjeve.
  - Sa klasa – një, dy apo më shumë?
  - Çfarë lloj të drejtash dhe preferencash duhet të ketë çdo klasë.

- Caktimi i aksioneve/pjesës për ndërmarrësit e përbashkët.
  - Si të vendosim ?
- Financimi i ndërmarrjes së përbashkët me hua.
  - Hua nga palë të treta.
  - Hua nga ndërmarrësit e përbashkët.
- Politika e dividentit – financimi i ndërmarrjes së përbashkët me të ardhura të mbajtura.
  - Çfarë shpresojnë palët?
  - Kush e bën politikën e dividentit?
  - Cilat janë mundësitë?
  - Çështje kontabiliteti.
    - Përcaktimi i fitimit dhe të hollave të përftueshme për shpërndarje.
- Diskutim i lirë – Pyetje dhe përgjigje – Ushtrimi i bisedimeve.
  - Përcaktimi dhe llogaritja e kontributit të ndërmarrësve të përbashkët të shoqërisë së kompleksit blegtoral Durrës.
  - Vendosja e politikës së dividentit për ndërmarrjen e përbashkët të shoqërisë së kompleksit blegtoral Durrës.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SEANCA E PESTE : DREJTIMI/MANAXHIMI I NDERMARRJES SE PERBASHKET

- Hapja e seancës
- Marrja e vendimeve — Si do të manaxhohet, drejtohet dhe kontrollohet ndërmarrja e përbashkët?
  - Kush merr pjesë në marrjen e vendimeve.
  - Kush do t'i marrë vendimet e përditshme?
  - Kush do të marrë vendime vendimtare dhe të jashtëzakonshme.
  - Rolet dhe funksionet e këshillave të manaxhimit e mbikqyrjes, asambleve, drejtorëve, punonjësve të zyrave, punonjësve joekzekutivë, bordeve, komiteteve dhe revizorëve të jashtëm.
  - Rregulli i shumicës kundrejt të drejtave të pakicës.
    - A duhet shumica të sundojë gjithmonë?
    - Si mbrohen interesat e ortakut në ndërmarrjen e përbashkët më të vogël.
    - Ndikimi i ligjit mbi shoqërinë në marrjen e vendimeve.
      - Dy ose më shumë klasa.
      - Të drejta të veçanta votimi.
      - Teknika të tjera.

        Çështje dhe vendime kyçe që kërkojnë unanimitet ose shumicë dërmuese.
      - Teknikat për rrugëdalje në rast ngeçje të bisedimeve.
- Diskutim i lirë—Pyetje dhe përgjigje—Ushtrimi i bisedimeve.
  - Përcaktimi dhe bisedimet për vendimet bazë që kërkojnë unanimitet ose shumicë dërmuese dhe vendim-marrësit e përshtatshëm.
  - Ushtrime të tjera manaxhimi dhe kontrolli.

NEGOCIATAT, STRUKTURIMI DHE DOKUMENTACIONI I NDERMARRJEVE TE PERBASHKETA NDERKOMBETARE

SEANCA E GJASHTE : ZGJIDHJA E MOSMARREVESHJEVE TE NDERMARRJES SE PERBASHKET

- Hapja e seancës
- Rëndësia e zgjedhjes se ligjit dhe gjuhës në ndërmarrjet e përbashkëta ndërkombëtare.
- Vështrim i përgjithshëm mbi metodat dhe mekanizmat e zgjidhjes së mosmarrëveshjeve.
  - Bisedimet.
  - Kalimi i çështjes në një organ më të lartë të ndërmarrjes së përbashkët.
  - Ndërmjetësimi (Pajtimi).
  - Alternativa të tjera mbi mekanizmat e zgjidhjes se mosmarrëveshjeve.
  - Paditja.
- Arbitrimi kundrej paditjes.
  - Avantazhet e paditjes.
  - Disavantazhet e paditjes.
  - Avantazhet e arbitrimit.
  - Disavantazhet e arbitrimit.
- Arbitrimi institucional dhe arbitrimi ad hoc.
  - Përkufizimi i arbitrimit institucional.
  - Përkufizimi i arbitrimit ad hoc.
  - Avantazhet dhe disavantazhet.
- Vështrim i përgjithshëm mbi institucionet dhe regjimet ndërkombëtare të arbitrimit.
  - Dhoma e Tregtisë Ndërkombëtare.
  - Shoqata Amerikane e Arbitrimit.
  - Gjykata Londineze e Arbitrimit Ndërkombëtar.

- Dhoma e Tregtisë në Stokholm.
- Institucione të tjera arbitrimi.
- Shoqata Italiane e Arbitrimit.
- Rregullat e UNCITRAL–it mbi arbitrimin.

Efekti ligjërisht i detyrueshëm i vendimeve të arbitrimit.

- Konventa e Nju Jorkut e vitit 1958 mbi njohjen dhe zbatimin e detyruar të vendimeve të arbitrimit të huaj.
- Sa përfundimtar është një vendim arbitrimi?

Si të hartojmë një akt arbitrimi?

Diskutim i lirë–Pyetje dhe përgjigje–Ushtrimi i bisedimeve

- Çfarë ligji/ligjesh duhet të zbatohen ose do te zbatohen për shoqërinë e përbashkët të kompleksit blegtoral Durrës?
- Si dhe ku duhet të zgjidhen në të ardhmen mosmarrëveshjet në shoqërinë e përbashkët të kompleksit blegtora Durrës.

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

A TRAINING SEMINAR AND WORKSHOP
SPONSORED BY
THE AMERICAN BAR ASSOCIATION
CENTRAL AND EAST EUROPEAN LAW INITIATIVE
AND
THE UNITED STATES DEPARTMENT OF COMMERCE
COMMERCIAL LAW DEVELOPMENT PROGRAM

TIRANA, ALBANIA
13-16 JULY, 1993

LISTING OF HANDOUTS ACCOMPANYING COURSE OUTLINE

1. Introduction to the Workshop and the Durres Battery Company Case Study

2. Case Study Materials: (a) Introduction to Durres Battery Company Case Study; (b) Text of Letter from Albania State Battery Enterprise to Bari SLI Battery Company dated 12 July 1993; (c) Durres Battery Company Case Study Proposed Joint Venture Contract and Statute of Durres Battery Company; (d) Durres Battery Company Case Study Description of the Case

3. Documenting the Joint Venture – Outline of Basic and Ancillary Joint Venture Documents

4. Sample Letters of Intent and Overview of Joint Venture Agreement Clauses

5. A Primer on Reviewing and Drafting Joint Venture Documents: (a) Ten Goals of a Joint Venture Document or Clause; and (b) Checklist of 25 Preliminary Questions to Ask Yourself When Reviewing or Drafting a Joint Venture Document or Clause

6. Key Decisions Requiring Unanimity or Special Majority

7. How to Draft an Arbitration Clause

HANDOUT 1

INTRODUCTION TO THE WORKSHOP
AND
THE DURRES BATTERY COMPANY CASE STUDY

©A. David Meyer

ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

INTRODUCTION TO THE ART OF NEGOTIATING, STRUCTURING AND DOCUMENTING INTERNATIONAL JOINT VENTURES

An attorney or government official who is called on to negotiate, structure, document or review a proposed international joint venture is faced with a formidable task. While other international business transactions may follow typical commercial patterns familiar to all concerned parties, the "typical" international joint venture is unique. The business and legal considerations and issues that must be identified, analyzed, understood, negotiated and documented will always be unique because the parties to the venture, their individual and mutual objectives, the business purposes of the venture, the resources available to the venture, and its political, geographic, economic, social, cultural and legal contexts always present a set of unique circumstances. Unique challenges invariably accompany unique circumstances. When confronted with unique circumstances, the paramount challenge faced by the venturers and their advisors is to accommodate and manage this diversity and craft business and legal relationships that enhance the ability of the venturers to realize their objectives over the duration of the venture.

One part of this process of crafting appropriate business and legal relationships between or among the joint venturers is the creation of a set of joint venture documents that promote the interests of the venturers. Although the challenges are always unique, it is possible to identify categories of considerations and issues commonly encountered in joint ventures such as those related to the most appropriate legal, capital and management structures for the venture. The art of crafting an appropriate set of joint venture documents lies in the ability to focus on these and other categories and subcategories of considerations and issues and create structures, mechanisms and solutions that take into account the unique business and legal circumstances of the venturers.

The purpose of this workshop is to introduce the attorney or governmental official who has had little or no experience with international joint ventures to the art of negotiating, structuring and documenting joint ventures. At best, it is only an introduction to the subject, but an introduction intended to leave the participant with a foundation on which to build through further training, reading and actual experience.

Welcome to the workshop and the world of international joint ventures!

We look forward to your active participation.

NJOHJE FILLESTARE ME SEMINARIN

DHE

SHEMBULLIN IMAGJINAR TE SHOQERISE SE PRODHIMIT TE BATERIVE

DURRES

@ A. DAVID MEYER

FAKULTETI ABA CEELI / CLDP

SEMINAR MBI NDERMARJET E HUAJA TE PERBASHKETA

T I R A N E , S H Q I P E R I

13 - 16 KORRIK 1993

NJOHJE ME ARTIN E NEGOCIJIMIT , STRUKTURIMIT DHE DOKUMENTIMIT TE NDERMARJEVE TE HUAJA TE PERBASHKETA .

Avokati ose perfaqesuesi zyrtar i kerkuar per te negociuar, strukturuar, dokumenruar apo per te rishikuar nje ndermarje te huaj te perbashket ndeshet me nje detyre teper te veshtire per tu realizuar . Nderkohe qe transaksionet e biznesit nderkombetar mund t'u permbahen modeleve tregetare tipike te njohura nga te gjitha palet , ndermarja e huaj e perbashket " tipike " eshte unike ne ilojin e vet . Faktoret dhe ceshtjet perkatesisht ligjore dhe te biznesit te cilat duhen identifikuar , analizuar , kuptuar , negociuar dhe dokumentuar gjithmone do te jene unike sepse palet ndermarese , objektivat vetjake dhe te perbashketa , qellimet afariste te ndermarjes , burimet ne dispozicion te ndermarjes, si dhe kuadri i saj politik , gjeografik , ekonomik , social , kulturor dhe ligjor gjithmone perfaqeson nje teresi rrethanash unike . Sfidat unike vazhdimisht shoqerojne rrethanat unike . Kur ndeshen me rrethana unike sfida me supreme nga ana e paleve ndermarese dhe keshilltareve te tyre ka te beje me perputhjen dhe pershtatjen e ketij diversiteti si dhe menyren se si mund te realizohen me kompetence mardheniet e biznesit dhe ato ligjore te cilet rrisin aftesine e paleve ndermarese per te realizuar objektivat e tyre gjate periudhes se veprimtarise se ndermarjes .

Nje pjese e procesit te realizimit me kompetence te mardhenieve te pershtateshme te biznesit dhe atyre ligjore midis ose perbrenda paleve ne ndermarjen e perbashket eshte krijimi e dokumentacionit te ndermarjes

se perbashket te cilat nxisin interesat e paleve ndermarese. Ndonese sfidat gjithmone jane unike eshte emundur te identifikohen kategorite e faktoreve dhe ceshtjeve, te cilat ndeshen rendome ne ndermarjet e perbashketa, sic jane ato qe lidhen me strukturat me te pershtateshme ligjore, te kapitalit dhe drejtimit per ndermarjen. Arti i realizimit me kompetence te dokumentacionit te pershtatshem per ndermarjen e perbashket qendron ne aftesine per tu perqendruar ne keto kategori dhe nenkategori te tjera te faktoreve dhe ceshtjeve si dhe per te krijuar struktura, mekanizma dhe zgjidhje te cilat marrin parasysh rrethanat unike te biznesit si dhe ato ligjore te paleve ndermarese.

Qellimi i ketij seminari eshte njohja e avokatit apo perfaqesuesit zyrtar, i cili ka patur pak ose aspak pervoje ne ndermarjet e huaja te perbashketa, me artin e negocijimit, strukturimit dhe dokumentimit te ndermarjeve te perbashketa. Ne rastin me te mire, kjo perben vetem nje njohje me temen, e cila synon te krijoje bazen dhe themelin mbi .te cilet, pjesemarresit permes kualifikimit, literatures dhe pervojes se metejshme, do te formohen.

Mireserdhet ne seminar dhe ne boten e ndermarjeve te huaja te perbashketa!

Mirepresim pjesemarrjen tuaj aktive.

HANDOUT 2

INTRODUCTION TO DURRES BATTERY COMPANY CASE STUDY

©A. David Meyer
ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

INTRODUCTION TO THE CASE STUDY

The Durres Battery Company Case Study will be referred to, analyzed, discussed and negotiated throughout the workshop by the Faculty and workshop participants. Although the facts and the participants are entirely fictional and are not based on any actual joint venture or persons in Albania, Italy or any other country, this fictional joint venture is intended to provide a common background set of circumstances that afford the Faculty and workshop participants the opportunity to practice the art of negotiating, structuring and documenting an international joint venture.

Workshop participants should review the following Case Study documents in addition to those handed out during the workshop sessions:

1. Letter dated 12 July 1993 from Ilir G., Manager of Albania State Battery Enterprise ("Al-Bat"), to Mrs. Maria A., Director of Bari SLI Battery Company ("Bari-Bat").

2. Proposed Joint Venture Contract and Statute of Durres Battery Company prepared by a friend of Ilir G. in the Ministry.

3. Durres Battery Company Case Study -- Description of the Case.

4. A Primer on Reviewing and Drafting Joint Venture Documents that includes:

    - Ten (10) Goals of a Joint Venture Document or Clause

    - Checklist of Twenty Five (25) Preliminary Questions to Ask Yourself When Reviewing or Drafting a Joint Venture Document or Clause

During the workshop, the Faculty and the participants will explore the following topics:

1. Assume you are a Lawyer for the Italian Venturer, Bari-Bat.

    Should Mrs. A. Sign the Proposed Joint Venture Contract and Statute of Durres Battery Company on 16 July 1993 as Requested by Ilir G.?

2. Assume you are a Lawyer for Al-Bat.

Should Ilir G. be Authorized by the Management of Al-Bat to Sign the Proposed Joint Venture Contract and Statute of Durres Battery Company on 16 July 1993?

3. **Assume you are a Government Lawyer or Ministry Official in the Ministry Charged With the Responsibility of Authorizing Joint Ventures With Foreign Investors.**

   Should the Ministry Approve the Proposed Joint Venture Contract and Statute of Durres Battery Company and Grant an Authorization on or Before 16 July 1993?

GENERAL DISCUSSION QUESTIONS

1. **What are the Alternatives Available to Bari-Bat, Al-Bat and the Ministry?**

2. **What are Your Specific Recommendations?**

3. **What are the Problems, Issues and Other Considerations That Influence Your Recommendations?**

4. **Does the Proposed Joint Venture Contract and Statute of Durres Battery Company Satisfy the Ten (10) Goals of a Joint Document or Clause?**

DURRES BATTERY COMPANY CASE STUDY

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INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

TEXT OF LETTER FROM ALBANIA STATE BATTERY ENTERPRISE TO BARI SLI BATTERY COMPANY DATED 12 JULY 1993

12 July 1993

Mrs. Maria A.
Director
Bari SLI Battery Company
Hotel Tirana, Suite 1100
Tirana, Albania

Dear Mrs. A.:

I am pleased that you enjoyed your day in Durres. On your next trip, I hope you have more time to visit with your grandmother's relatives and enjoy the sea and the beach.

I was even more pleased to hear that you like our factory site and want to form a joint venture with us. Our equipment may be old, but we have land, buildings, workers and the location you need. Durres is ideal for your plans. With your modern equipment, technology and capital, I am sure we will make large profits from the beginning once we increase our production rate to 3,000 batteries a day.

I had a friend in the Ministry prepare a standard form of joint venture agreement for us. It is based on another joint venture that was approved last year by the Ministry so we should have no problems. Officials here in Durres and Tirana are anxious to announce and celebrate the formation of our joint venture at a special ceremony in your honor on Friday, 16 July 1993, in the Hotel Dajti at 1400. Everyone important to our success will be there as well as the local television station and newspaper reporters. A reception will follow the official signing and inauguration of our joint venture.

For political, economic and social reasons, it is important to sign a joint venture contract before you return to Italy on Saturday. Our workers are unhappy about the workers we dismissed last month and are concerned we may shut down the factory. I cannot buy any more lead, battery cases, or other raw materials from abroad without more credit and may not be able to pay my workers next month. If there is any delay, I must sign a joint venture agreement with the German battery company that was here in June. Its representatives want to return to Tirana and Durres on 22 July 1993 and sign a binding letter of intent.

At the ceremony, we have the opportunity to talk to the right people about the exclusive battery contract you want with the government. I have already discussed this matter with several people in the government and they support your idea of requiring all government agencies to buy only "Made in Albania" batteries for their cars and trucks. They also support your son Carlo's proposal for duties on imported batteries including those already installed in cars and trucks being imported into the country. His goal of installing "Made in Albania" batteries in each car and truck brought into the country is excellent.

Please excuse the fact that the enclosed joint venture contract is in English. The official Albanian version is being typed and will be ready on Friday. When you return to Italy, please have the English copy translated into Italian and send me a signed copy. If any changes need to be made in our signed contract, we will have time to do that after you return to Italy. You will have our full cooperation.

_____

Ilir G.
Manager, Albania State
Battery Enterprise

On Friday, could we also discuss the monthly consulting fee for my services that I proposed?

DURRES BATTERY COMPANY CASE STUDY
PROPOSED JOINT VENTURE CONTRACT
AND
STATUTE OF DURRES BATTERY COMPANY

©A. David Meyer
ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

CAVEAT: This joint venture agreement was developed for teaching purposes only. IT IS INCOMPLETE AND CONTAINS NUMEROUS ERRORS AND OMISSIONS. It does not contain any model or recommended clauses. UNDER NO CIRCUMSTANCES SHOULD THIS FORM BE USED IN WHOLE OR IN PART FOR ANY ACTUAL JOINT VENTURE.

The following is the text of the proposed Joint Venture Contract and Statute of Durres Battery Company delivered with the 12 July 1993 letter from Ilir G. of Albania State Battery Enterprise to Maria A. of Bari SLI Battery Company:

JOINT VENTURE CONTRACT
AND STATUTE OF
DURRES BATTERY COMPANY

1. Albania State Battery Enterprise (hereinafter referred to as the "Albanian Partner"), legal person, registered in Durres, Albania, acting in compliance with Albanian legislation, represented by Mr. Ilir G., Manager, Albanian citizen, and

2. Bari SLI Battery Company (hereinafter referred to as the "Italian Partner") legal person, registered in Bari, Italy, acting in compliance with Italian legislation, represented by Mrs. Maria A., Director, Italian citizen, have agreed to the following:

ARTICLE 1
FORMATION OF JOINT VENTURE

The parties hereby found an Albanian-Italian joint venture.

ARTICLE 2
NAME AND HEAD OFFICE

The legal name of the joint venture is "Durres Battery Company."

The head office of the joint venture will be in either Durres or Tirana as determined by mutual agreement of the parties.

ARTICLE 3
LEGAL PERSONALITY

The joint venture will be an Albanian legal person and will have all the rights and privileges granted to legal persons and foreign companies under Albanian law.

ARTICLE 4
DURATION

The duration of this contract is twenty five (25) years with the right to be continued for twenty-five (25) more years.

ARTICLE 5
PURPOSE

The joint venture has the following main objectives:

A. The manufacture and sale of batteries in Albania and other countries.

B. The joint venture may exercise every commercial and financial activity not prohibited by either Albanian or Italian law.

ARTICLE 6
MANAGEMENT

A. The initial Management of the joint venture will consist of five (5) members. Each partner shall appoint two (2) members of the Management and these two (2) members shall appoint the fifth (5th) member of the Management.

B. The activities of the joint venture will be managed by the Management of the joint venture in compliance with the present contract and Albanian and Italian law.

ARTICLE 7
CAPITAL CONTRIBUTIONS

A. The initial capital of the joint venture will consist of the minimum amount of capital required by Albanian law. Each partner shall contribute one half of this amount in cash.

B. After registration of the joint venture, the Albanian Partner will contribute its land, buildings, machinery and equipment, other tangible personal property and consulting and supervisory services to the joint venture.

C. After registration of the joint venture, the Italian Partner will contribute battery manufacturing machinery and equipment, technology, raw materials, cash and credits, and technical and management services to the joint venture.

D. The evaluation of contributions "in kind" shall be made on the basis of Albanian legislation and the joint agreement of the partners.

E. Contributions of Albanian land and buildings shall be free and clear of mortgages and other liens.

ARTICLE 8
GOVERNMENT APPROVALS

The joint venture will start its activities following receipt of written approval from the Government of Albania authorizing and approving all of the terms and conditions of the joint venture.

ARTICLE 9
DIVISION OF PROFITS

A. The profits of the joint venture will result after the deduction from the total annual trade volume of all obligations linked with its activity including expenditures for raw materials, supplies, wages, salaries, purchases of equipment, investments, amortizations, reserves, funds, taxes and other financial expenditures.

B. The partners shall participate in the profits or losses of the joint venture according to the percentage of their participation in the capital of the joint venture.

ARTICLE 10
SHARES

All shares of the joint venture will be registered and negotiable only between the partners unless the partners otherwise mutually agree.

Each share shall be entitled to one (1) vote on all matters related to the activities of the joint venture.

ARTICLE 11
EMPLOYEES

The partners agree that labor matters related to the employment of workers will be treated by the joint venture with individual contracts with each worker.

The joint venture shall not be required to recognize any labor council or union of workers employed by the Albanian Partner or by the joint venture.

ARTICLE 12
TERMINATION

When the venture stops its activity it shall distribute to the partners the remaining part of the capital and income of the venture according to their percentage of participation in the capital of the joint venture after it has paid all existing obligations.

In kind contributions shall be returned to the partner who contributed them to the joint venture.

ARTICLE 13
PROTECTION OF FOREIGN INVESTMENT

A. The investment of the foreign investor in the joint venture shall be protected by the Albanian state according to the Foreign Investment Act.

B. The share of the profits of the foreign investor can be freely transferred abroad in foreign currency after eventual taxes are paid on the basis of Albanian legislation except that the profits of the joint venture shall not be subject to any taxes during the first five years of operations of the joint venture.

C. In case of privatization of the business of the Albanian Partner after signing this contract, this contract continues existing and the Italian Partner has priority for the purchase of the business and assets of the Albanian Partner.

D. Upon approval of this contract, the Albanian Partner will continue existing as a legal entity. Its commercial activities and assets and employees however will be absorbed by the joint venture.

E. The joint venture will not be responsible for and will not recognize any financial obligations to the National Bank of Albania or any other bank or institution for any of the debts of the Albanian Partner prior to the creation of this joint venture.

ARTICLE 14
ARBITRATION

The parties are pledged to collaborate and be guided by good will in realizing the object of this contract.

In case there is a need for arbitration to settle any disagreement related to the interpretation or validity of this contract, it will be held and decided in the International Court of Arbitration in Paris in accordance with French law and the procedures of the International Centre for the Settlement of Investment Disputes (ICSID).

Each partner shall appoint one arbitrator and the two arbitrators shall appoint a third arbitrator and the decision of the three (3) arbitrators shall not be subject to challenge or appeal.

ARTICLE 15
ENTIRE AGREEMENT

This contract constitutes the entire agreement of the parties regarding the joint venture and supersedes all other agreements, understandings and representations.

ARTICLE 16
LANGUAGE

This contract has been drafted in the Albanian and Italian languages, which bear equal validity in the interpretation and implementation of this contract.

ARTICLE 17
OTHER MATTERS

All other matters not covered by this contract shall be decided by mutual agreement of the parties or by applicable law.

Ilir G.	Maria A.
____July, 1993	____July, 1993

DURRES BATTERY COMPANY CASE STUDY
DESCRIPTION OF THE CASE

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INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

OVERVIEW

Albania State Battery Enterprise ("Al-Bat"), located in Durres, Albania, and Bari SLI Battery Company ("Bari-Bat"), located in Bari, Italy, desire to form a joint venture for the production of automotive and possibly other kinds of starting, lighting and ignition ("SLI") lead acid batteries in Durres, Albania. During the last twelve (12) months, Maria A., Director of Bari-Bat, visited Al-Bat on five (5) separate occasions and also toured the country from north to south. In addition to meeting with Ilir G., Manager of Al-Bat, Maria A. met with government officials in Durres and Tirana who encouraged her to invest in Albania.

On 8 July 1993, Maria A. met with Ilir G. in Durres and agreed in principle to proceed with the formation of a joint venture. Al-Bat will provide its land, buildings, and battery manufacturing machinery and equipment to the joint venture and will assist Bari-Bat with government approvals, incentives and other matters related to the organization and start up of the joint venture in Albania. Bari-Bat will contribute battery manufacturing equipment presently being used to manufacture SLI batteries in Bari. In addition, Bari-Bat will provide cash, credits, raw materials, technology, and technical and management services to the joint venture. The joint venture will be operated with both Albanian and Italian employees. Maria A. told Ilir G. that she wants him to work for the joint venture.

After their meeting on 8 July 1993, Ilir G. communicated the good news to several government officials in Durres and Tirana. They quickly scheduled a ceremony for 16 July 1993 to announce the formation of the joint venture. Ilir also met with a non-lawyer friend of his in the Ministry and asked him to prepare a standard form of joint venture contract. Ilir's friend found a form of joint venture contract and statute in one of the Ministry's files and over the weekend prepared a proposed Joint Venture Contract and Statute of Durres Battery Company. Ilir read through the proposed contract on Monday, 12 July 1993, and immediately delivered it to Maria A. along with a letter informing Maria A. of the ceremony scheduled for 16 July 1993 to announce the formation of the joint venture. Upon receipt of Ilir's letter and the proposed contract, Maria A. called her son, Carlo, in Bari. Due to the urgency of the situation, Carlo contacted the company's attorney, Mario B., and informed his mother that they would arrive in Tirana the following morning.

The time is now 1030 on 13 July 1993 and Maria A., Carlo A., and Mario B. are having coffee in the Hotel Tirana and discussing the proposed joint venture. Maria A. has just

asked Carlo and Mario what they think of the proposed joint venture contract and Ilir's letter. She asked them, "Is there any reason why I should not go ahead and sign the contract at the ceremony on Friday?"

At the same time, Ilir and other members of the management of Al-Bat are meeting with several government officials at the Ministry. There are two lawyers present at this meeting. One is Mak K., a lawyer who works in the Ministry, and the second is Kako P., a private lawyer born in Durres who has been asked to advise Al-Bat. The consensus is that a joint venture with Bari-Bat is desirable, but some of those present at the meeting have questioned whether the joint venture contract needs to be changed to comply with Albanian law and protect the interests of Al-Bat and the Republic of Albania.

FACTS ABOUT AL-BAT

1. Al-Bat is a state enterprise with no private owners. Although discussions have been held regarding "privatization" of Al-Bat, nothing has progressed beyond the stage of discussions. Some of the employees of Al-Bat recently petitioned the government for financial assistance to Al-Bat and demanded that at least part of the ownership of Al-Bat be given to them. They contend that they must have a voice in the future of Al-Bat in order to protect their jobs.

2. Al-Bat is still producing SLI batteries for automobiles and trucks, but is faced with severe production and financial problems. Production has fallen to less than 500 batteries a day. Al-Bat's equipment is over 20 years old and is based on obsolete Russian technology. Due to its rapidly deteriorating financial condition, Al-Bat is experiencing difficulty in obtaining essential raw materials such as lead, battery cases, and sulfuric acid. Even if funds are obtained for raw materials, there are no significant opportunities in foreign markets for Al-Bat's batteries because they cannot match the quality of other batteries available in the marketplace. In order to survive, Al-Bat must obtain more modern technology and equipment.

3. Al-Bat is having difficulty paying its remaining 100 employees even though it just reduced the number of workers from 175 to 100. Ilir G. has done his best to keep his most highly skilled workers, many of whom have chemical, mechanical or electrical backgrounds. Although Al-Bat's workers are technically skilled and well educated, its management and workers have little or no experience working and competing in a global market economy.

4. Al-Bat's battery manufacturing equipment is functioning, but is in need of repairs. Repairs are becoming more difficult because of a shortage of spare parts. If Al-Bat stops operations and is liquidated, there is no market for its equipment due to its age and obsolescence. No buyer would pay more than the "scrap value" of the equipment. Although it is difficult to estimate the value of this equipment, the consensus is that the scrap value does not exceed US$200,000.

5. Al-Bat has four (4) large buildings located on its property. Each building has approximately 4,000 square meters of useable space. Only one of the buildings is presently used for battery manufacturing operations. This building also has offices for management and administrative personnel. Two of the other buildings are vacant and the remaining building is used for storage of vehicles and equipment. Although the buildings are in need of some repairs, they are functional and structurally sound.

6. Al-Bat has approximately 60 hectares of land divided into three (3) tracts. Battery manufacturing operations are conducted on approximately fifteen (15) hectares. To the north of the battery site are another fifteen (15) hectares. A secondary lead smelter was formerly operated on this site, but operations stopped several years ago and the smelting equipment was dismantled and moved from the site. The remaining thirty (30) hectares lies to the south of the battery manufacturing site. This tract is undeveloped and includes land that adjoins the sea. Workers and their families often go there to relax, swim and enjoy the pristine beach and natural beauty that surrounds them.

The former secondary lead smelter site is polluted with lead, mercury, cadmium, and arsenic that resulted from the collection and breaking of old, junk batteries and from the disposal of slag and other wastes. The extent of the pollution is unknown. There is some risk that this pollution could affect the groundwater in the area.

The battery manufacturing site may have some relatively high levels of lead in the soil at isolated locations, but these levels are not likely to pose any immediate threat to human health or the environment.

The undeveloped site to the south is believed to be protected from this pollution by natural barriers and its distance from the operations of the battery plant.

FACTS ABOUT BARI-BAT

1. Bari-Bat is a newly formed subsidiary of Bari Battery International, a large Italian battery company founded by Maria A.'s deceased husband. Bari-Bat was formed with the minimum amount of capital allowed by Italian law. It was created for the sole purpose of entering into a possible joint venture in Eastern Europe. Bari Battery International will contribute additional capital to Bari-Bat in order to enable Bari-Bat to make its required capital contributions to the joint venture.

2. Maria A. and her three (3) children, Anna, Carlo and Dominic, own Bari Battery International. Maria owns forty-nine percent (49%) of the company and Anna, Carlo and Dominic own seventeen percent (17%) each. Only Maria A. and Carlo are active in the business. Anna is a professor of history and Dominic is an author of fiction and poetry.

3. Maria A. is 65 years old and plans to retire within the next year. She has successfully managed Bari Battery International since the death of her husband ten (10)

years ago, but is nearly ready to allow Carlo, age 44, to take over complete management of the business. Maria A. first wants to see the Durres Battery Company joint venture formed and commence operations. She has a special interest in this project because her mother's mother was born near Durres and she remembers with fondness the stories that her grandmother told of her life and family in Albania. On a recent trip to Albania, Maria A. discovered that two (2) of her distant cousins live in Durres and work for Al-Bat.

4. Another reason why Maria A. has not retired sooner is that she has some reservations about Carlo's management style. Although Carlo knows the battery business as well as anyone in the industry, Maria A. has received some complaints from employees, competitors, suppliers, and customers that Carlo can be abrasive and even ruthless at times. Maria A. has been a benevolent employer as was her husband. She has always taken a special interest in the company's employees and in the communities where the company's plants are located. Long before his death, Maria's husband created a special foundation that receives contributions each year from the profits of Bari Battery International. This foundation supports several charities and provides scholarships and other needed financial assistance to the company's workers and their families.

5. Carlo is aware of the rumors about him, but dismisses them as unfair. He believes that Bari Battery International must change the way it does business in order to survive and prosper in a global economy. Carlo contends that the company must reduce the number of its employees, curtail wage increases, reduce benefits to workers, and enter into strategic alliances in Italy and abroad. He believes that survival must be the primary objective of Bari Battery International and that sustained profitability is the key to survival and jobs for the company's workers.

6. Although Maria A. allows Carlo to make nearly all strategic and day to day decisions, Carlo has heard from his sister and brother that if he does not negotiate a "fair" joint venture with Al-Bat, his mother intends to offer the entire business for sale to a large German competitor. Carlo is opposed to an immediate sale to the Germans, but knows that his sister and brother will support their mother.

7. Bari Battery International is facing several new problems in the 1990's. The battery market in Italy and Western Europe has matured. Competition has dramatically increased and profit margins have eroded. The SLI battery market has been growing at less than two percent (2%) a year and competitors are fighting each other for larger shares of a less profitable pie.

8. Bari Battery International also has special problems in Bari, Italy. The company operates an old, secondary lead smelter in Bari that supplies recycled lead to its three (3) battery plants. The smelter will require large amounts of capital within the next three (3) to five (5) years. Pollution regulations have become more stringent in the European Community and Italy is following the lead of other EC countries in focusing on lead smelters. The smelter must be reengineered and equipped with very expensive smelting and

pollution control equipment. Carlo knows that it may be difficult to renew the company's environmental permits even if it installs new pollution control technology. The smelter is on too small a tract of land and is located too close to schools, a church and a residential neighborhood. Furthermore, it has become more difficult and expensive for the company to secure old, lead acid batteries and other lead scrap for its smelter. The company's environmental, engineering and financial consultants have recommended that the smelter be closed down or relocated.

9. Bari Battery International's only battery plant in Bari has the oldest manufacturing equipment of its three (3) plants and has higher costs of production than its other two (2) plants. The equipment in Bari is eight (8) years old. This equipment is well maintained, "like new," and capable of producing 4,000 or more batteries per day, but is too labor intensive in today's marketplace and significantly less efficient than the equipment in the company's other plants. Although the replacement value of the equipment in Bari is high, Carlo knows that there are few buyers for equipment this old. Carlo doubts whether the company could the sell the equipment easily and believes that the company would be fortunate if it could realize the equivalent of US$2,000,000 if and when a willing buyer is found. The original US$6,000,000 cost of the equipment has been fully depreciated.

10. The company's other plants have state of the art, microprocessor-controlled equipment that equals or exceeds any in the industry. Bari has one patent on part of its battery grid casting equipment and has a patent pending on a process for an advanced type of maintenance free lead acid battery. In addition, Bari has developed computer programs that monitor and control its state of the art equipment in these two (2) modern plants. The company's technology and trade secrets include product specifications, manufacturing and operating procedures, design data, performance specifications, test procedures, and quality control parameters.

11. Bari Battery International is considering three (3) options: (a) Sell the equipment in Bari and borrow the equivalent of US$12,000,000 to completely reequip the plant in Bari with state of the art battery manufacturing equipment; (b) Close the plant in Bari either temporarily or permanently, sell the equipment, and wait for market conditions to improve before considering whether to reopen and reequip the plant; or (c) Relocate the plant to Albania or some other Eastern European country.

12. Carlo has recently developed the following tentative outline of a proposed strategic plan for Bari Battery International and Bari-Bat:

A. Prevent Bari's German competitor from concluding a letter of intent with Al-Bat. Proceed with the formation of a joint venture between Bari-Bat and Al-Bat and contribute the battery manufacturing equipment in Bari to the joint venture. Value this capital contribution as close as possible to US$5,000,000.

B. Immediately reduce the number of workers in Durres from 100 to 70. Offer the

workers in Bari the opportunity to work in Durres and fill the remaining jobs with some of the present workers employed by Al-Bat.

C. Close the plant in Durres for approximately 60 days, install the equipment from Bari, repair and utilize part of Al-Bat's lead melting and lead oxide equipment, resume operations, and within six (6) months, reach a daily production level of 4,000 batteries per day, and sell the output in Albania, Italy and elsewhere at an average selling price of US$30.00 to US$35.00 per battery.

D. Sell raw materials to Bari-Bat from the following sources:

1. Recycled lead from Bari Battery International's secondary lead smelter subsidiary in Bari; and

2. Battery cases from Bari Battery International's affiliated plastic company.

E. Lend Durres Battery Company sufficient working capital for raw materials and other operating expenses, charge the maximum interest rate allowed by law, and secure repayment of this loan prior to distributing any profits of the joint venture.

F. Obtain long term governmental contracts to supply all central, district and local government agencies in Albania with "Made in Albania" batteries.

G. Obtain protective legislation that imposes duties on batteries brought into Albania from Greece, Turkey and other countries.

H. Obtain favorable legislation that excludes any form of taxes or duties on raw materials or equipment imported by Durres Battery Company.

I. Obtain relief from income taxes on profits earned by Durres Battery Company and dividends distributed to Bari-Bat.

J. Maintain control over the business of Durres Battery Company including control over purchasing, operations, employees, pricing, sales, dividends and other strategic and day to day decisions.

K. If Durres Battery Company prospers in a politically hospitable and stable environment, add second and third state of the art SLI battery manufacturing lines, increase the types and sizes of SLI batteries produced, and possibly start an industrial lead acid battery operation in one of the extra buildings that Al-Bat now owns.

L. Obtain exclusive control over the collection of old, junk batteries and lead scrap generated in Albania or collected in Albania from other countries and use this source of raw materials as feed for the secondary lead smelter in Bari. To accomplish this goal, a

special regulatory scheme will need to be implemented that requires cooperation with the government in addition to relief from export controls, licenses and fees.

M. If sufficient quantities of junk batteries and lead scrap can be obtained on a consistent basis, form a new subsidiary company, relocate the secondary lead smelter from Bari to Durres, and lease land from the joint venture on a long term basis at a rate favorable to Bari's lead smelter subsidiary. Add an environmentally state of the art acid purifier system to the smelter that reclaims all of the incoming sulfuric acid from junk batteries with no harmful by-products or waste and sell this refined acid to Durres Battery Company.

N. Within four (4) to five (5) years after formation of Durres Battery Company, buy out the interest of Al-Bat in the joint venture at a pre-determined formula based on the net book value of the assets of Durres Battery Company.

O. Within five (5) to ten (10) years after formation of Durres Battery Company, sell Durres Battery Company, the secondary lead smelter, and perhaps all of Bari Battery International to a large German conglomerate at a price based on a multiple of the consolidated earnings of the company.

Carlo has not shared the details of this plan with his mother or with Mario B.

PARAQITJE

STUDIMIT TE RASTIT TE NDERMARRJES

SE PERBASHKET TE BATERISE

SE DURRESIT.

A.David Meyer.

Fakulteti CLDP,ABA CHELI

Seminar mbindermarjet e perbashketa nderkombetare.

Tirane Shqiperi 15-16 Prill 1993.

Prezantimi i studimit te ketij rasti.

Rasti i baterise se Durresit do ti referohemi,do ta analizojme diskutojme gjate gjithe seminarit te organizuar nga Fakulteti dhe pjesemarresit ne seminar.Megjithese faktet dhe person nuk jane reale dhe nuk bazohen mbi ndonje ndermarrje te perbashket aktuale apo persona ne Shqiperi Itali apo ndonje vend tjeter kjo ndermarrje e perbashket jo reale do te sherbeje si sfondi i perbashket i rrethanave qe i japin mundesine Fakultetit dhe pjesemrresve ne seminar te praktikojne artin e bashkebisedimeve,strukturimit dhe dokumentimit te nje ndermarje te perbashket nderkombetare.

Pjesemarresit ne seminar duhet te shikojne dokumentet e meposhteme te Studimit te Rastit perveç atyre te shperndara gjate sesioneve te seminarit.

1.-Letra dt.12 Prill 1993 nga Ilir G. Drejtues i Ndermarjes Shteterore Shqipetare te Baterise(Al-Bat) drejtuar Znj.Maria A. Drejtore e SLI Ndermarrjes se Baterise ne Bari(Bari-Bat).

2èKontraten e Ndermarjes se Perbashket qe propozohet dhe Statutin e ndermarrjes se baterise Durres e pregatitur nga nje mik i IlirG. ne Ministri

3-Pershkrimi i Studimit te rastit ndermarjes se baterise se Durresit. 4-Nje fletore baze per rishikimin dhe hartimin e dokumenteve te Ndermarrjes se Perbashket qe perfshin:

10(Dhjete) qellimet e dokumentet apo akte e krijimit te ndermarjes se perbashket

-Nje liste me 25(Njezet e pese) pyetje paraprake qe mund te dalin gja te rishikimit apo hartimit te dokumenteve apo aktit te krijimit te Ndermarjes se perbashket.Gjate seminarit Fakulteti dhe pjesemarresit do te zberthejne temat e meposhteme:

1.-Supozoni se jeni Jurist(Avokat)per Ndermarjen Italiane,Bari Bat.A duhet zonja A te nenshkruaje kontraten e propozuar per ndermarjen e Perbashket dhe statutin e ndermarjes se Baterise se Durresit me 16 K Korrik 1993 me kerkesen e Ilir G.?

2.-Supozoni se jeni Juristi i AL-Bat.A duhet Ilir G. te autorizohet prej Bordit Drejtues te AL-Bat te nenshkruaje Kontraten e propozuar te ndermarjes se Perbashket dhe statutin e ndermarjes se baterise ne Durres me 16Korrik 1993.

3.-Supozoni se jeni Jurist Shteteror apo Zyrtar ne Ministrine e ngarkuar me pergjegjesine per te autorizuar krijimin e Ndermarjeve te Perbashketa me Investitoret e huaj.A duhet Ministria te aprovoje kontraten e propozuar dhe statutin e Ndermarjes se perbashket te baterise se Durresit dhe ta jape Autorizimin para dt.16Korrik 1993 apo ne kete date.

Pyetje per diskutime te pergjitheshme.

1.-Cilat jane alternativat apo opsionet e mundeshme per Bari-Bat,AL-Bat dhe Ministrine?

2;-Cilat jane rekomandimet tuaja specifike?

3.-Cilat jane problemet qeshtjet dhe konsideratat e tjera qe ndikojne mbi rekomandimet tuaja?

4.-I plotesoni kontrata dhe statuti per krijimin e ndermarjes se perbashket te Bat se Durresit 10(Dhjete).Qellimet e Aktit apo dokumentet te perbashket?

-STUDIMI I RASTIT TE NDERMARJES SE BATERIS SE DURRESIT

- DAUD MEYER -

Fakulteti C L D P - A R A C E E L I -

Seminar per ndrmarjet e perbashkta nderkombetare

- T I R A N E S H Q I P E R I -

Dat: 13--16 korrik 1993

Teksi i leteres nga Ndermarije Shteterore Shqipetare e baterise drejtuarndermarjes bateris se Barit

- Dat-12 Korrik 1993 -

12Korrik 1993
Zonjes MARIA A
Drejtore
Ndermarje e bateris S L I Bari
Hotel T I R A N A dhoma 1100
- TIRANE SHQIPERI-

E dashur Zonj A

Jam i gezuar qe ja kaluat mire ne Durres.Ne udhetimin tuaj ne te afert,shpresoj te kini me shume kohe te vizitoni te afermit e gjyshes suaj dhe te kenaqeni me detin dhe plazhin.

Kenaqesia eshte ende me e madhe kur mesova se ju e kishit pelqyer fabrikën dhe desheroni te krijoni nje ndermarrje te perbashket me ne.Paisjet tona mund te jene te vjeteruara,por ne kemi token,godinat punetoret dhe lokalet e nevojeshme.Durresi eshte vend ideal per planet tuaja.Me pajisjet tuaja moderne,teknollogjine dhe kapitalin jam i sigurt se ne do te nxjerrim fitime te medha qe ne fillim me nxitjen e prodhimit me 3000 bateri ne dite.

Nje miku im ne ministri ka pregatitur nje formular standart te te marreveshjes per ndermarjen e perbashket per ne.Eshte hartuar mbi bazen enje ndermarrje tjeter te perbashket krijimi i te cilës u aprovua nga ministria vitin e kaluarkeshtu qe nuk e besoj se do te kemi pro

bleme.Qeveritaret ne Durres e Tirane po presin me padurim te shpallin dhe festojne krijimin e ndermarrjes tone te perbashket ne nje ceremoni te veçante per nderin tuaj diten e Premte,16 Korrik 1993. ne Hotel "Dajti" Nº 1400.Te gjithe personat qe kane rendesi per suksesin tone do te jene prezent si dhe televizioni lokal dhe gazetaret te ndryshem

Mbas nenshkrimit dhe perurimit te ndermarrjes se perbashket do te kete edhe nje pritje.

Per aresye sociale,ekonomike dhe politike eshte e rendesi shme te nenshkruajme kontraten e ndermarrjes se perbashket para kthimit tuaj ne Itali dhe diten e Shtune .Punetoret tane jane te pakenaqur me heqjen nga puna te nje numuri punetoresh muajin e kaluar dhe jane te shqetesuar qe mos fabrika mbyllet fare.Une nuk jam ne gjendje te blej plumb,kasa baterish apo lende te pare nga jashte pa marre kredi dhe ka mundesi qe te mos jemi ne gjendje te paguajme punetoret muajin e ardhe shem.Megjithese do te kete vonesa jam i detyruar te nenshkruaj marrevesh je per ndermarrje te perbashket me nje ndermarrje Gjermane Baterish qe ishte ketu ne Qershor.Perfaqesuesit e saj do te kthehen ne Tirane d dhe Durres me 22Korrik 1993 dhe do te nenshkruajne nje leter te detyru esme.Ne ceremoni dote kemi rastin te flasim per kontraten ekskluzive per baterine qe ju do te keni me Qeverine.

Tashme e kam biseduar kete çeshtje me nje numur personash ne q Qeveri dhe ato e mbeshtesin idene tuaj qe kerkoni qe te gjitha agjensite shteterore te blejne vetem bateri "Prodhim Shqipetare"per veturat dhe ka mionet e tyre.Ata gjithashtu mbeshtetin propozimin e djalit tuaj Karlo per tarifat doganore me baterite e importuaraperfshire ketu edhe ato te instaluara ne vaturat dhe kamionet e importuarane vend.Qellimi i tij per te instaluar "Prodhim Shqipetar" ne çdo makine te futur ne vend eshte i shkelqyer.

Te lutem,ju kerkoj ndjese qe kontrata per ndermarrjen e perba shket e mbyllur ne zarf eshte ne Anglisht.Versioni zyrtar ne Shqip do te saturot dhe do te jete gati per diten e Premte Kur te kthehemi

ne Itali,te lutem perkthehëni ne anglisht ne Italisht dhe ma degoni nje kopje te firmosur.N.q.s. do telinde nevoja per ndryshime ne kontraten e nenshkruar do te kemi kohe ta realizojme ate mbasi per te ktheheni ne Itali.Bashkepunimi yne i plote nuk do tju mungoje.

Ilir G. Drejtues i ndermarrjes Shteterore e Baterise Durres.

Te Premten,a mund gjithashtu te diskutojme per pagen mujare per sherbimet e mija qe ju propozova?

KONTRATË E PROPOZUAR PËR KRIJIMIN E NDËRMARJES SË PËRBASHKËT
DHE STATUTI I NDËRMARJES BATERISË DURRËS

A. David Meyer
Fakulteti OLDI/ABA CIELI

Seminar për ndërmarjet e përbashkëta ndërkombëtare
TIRANË-SHQIPËRI
13-16 Korrik 1993

Kujdes: "Ajo marrveshje për ndërmarjen e përbashkët është hartuar vetëm për qëllim mësimor dhe nuk është e plotë dhe ka mjaft gabime dhe mangësi. Ajo nuk përmban ndonjë model apo akt të rekomanduar. Në asnjë mënyrë nuk duhet përdorur ky formular apo pjesë të tijpër ndonjë ndërmarje të përbashkët?

Në vijim është teksti i kontratës për ndërmarjen e përbashkët dhe statuti i Ndërmarjes së Baterisë të Durrit dërguar bashkëlidhur me letrën e Ilir G i Ndërmarjes Shtetërore Shqiptare të Baterisë Maria A. Të kompanisë së Baterisë SU Bari ,më 12 Korrik 1993.

KONTRATË E NDËRMARJES SË PËRBASHKËT DHE STATUTI I KOMPANISË SË BATERISË -DURRËS

1. Ndërmarja Shtetërore Shqiptare e Baterisë (këtej e tutje e quajtur "Partneri Shqiptar") person juridik,regjistruar në Durrës ,Shqipëri,që vepron sipas legjislacionit shqiptar ,përfaqësuar nga Z.Ilir G.

2. Kompania e Baterisë SU e Barit (këtej e tutje e quajtur "Partneri Italian") person juridik ,regjistruar në Bari,Itali,që vepron sipas legjislacionit italian ,e përfaqësuar nga znj.Maria A. ,drejtore ,qytetare italiane ,kanë rënë da ort për sa vijon:

Neni 1

Krijimi i ndërmarjes së përbashkët

Palët formuan ndërmarje të përbashkët Shqiptare-Italiane

Neni 2

Emri dhe zyra drejtuese

Emri juridik i ndërmarjes së përbashkët është "Kompania e Baterisë-Durrës".

Zyra e Ndërmarjes së Përbashkët do të vendosen në Durrës ose Tiranë si të vendoset në marrveshjen e përbashkët të palëve.

Neni 3

Personaliteti juridik

Ndërmarja e përbashkët do të jetë person juridik shqiptar dhe do të ketë të gjitha të drejtat dhe privilegjet të garantuara personave juridik dhe firmave të huaja sipas ligjeve shqiptare.

Neni 4

Koho zgjatja

Kohëzgjatja e kësaj kontrate është 25(njëzet e pesë) vjet me të drejt
për të vazhduar edhe për 25(njëzet e pesë) vjet të tjera.

Neni 5

Qëllimi

Ndërmarje e përbashkët ka objektivat kryesore si vijon:

A. Prodhimin dhe shitjen e baterive në Shqipëri dhe në vende të tjera

B. Ndërmarja e përbashkët mund të ushtrojë aktivitet financiar dhe tregëtar pa u penguar nga ligjet shqiptare apo italiane.

Neni 6

Drejtimi

A. Drejtimi fillestar i ndërmarjes do të bëhet nga 5(pesë)persona. Sejcili partner do të caktojë 2(dy) anëtarë për bordin drejtues dhe këta 2(dy) anëtarë do të caktojnë anëtarin e pestë të Bordit Drejtues.

B. Veprimtaria e ndërmarjes do të drejtohet nga Bordi drejtues i ndërmarjes në përputhje me kontratën e tanishme dhe ligjet shqiptare dhe italiane.

Neni 7

Kontributi për kapitalin

A. Kapitali fillestar i ndërmarjes së përbashkët nga kapitali minimal sipas ligjit shqiptar çdo partner do të kontribojë me gjysmën e sasisë me para në dorë.

B. Pas regjistrimit të ndërmarjes së përbashkët ,partneri shqiptar do të kontribuojë me tokë, ,godinat,makineritëdhe paisjet dhe pasuri tjetër të përbashkët si dhe me shërbime konsultive dhe mbikqyrëse.

C. Pas regjistrimit të ndërmarjes së përbashkët partneri italian do të sjellë paisje e makinari për prodhimin e baterive ,teknologji,lëndë të pa-rë dhe kredi e para ,shërbime teknike dhe drejtimi.

D) Vlerësimi i kontributeve " në lloj" do të bëhet në bazë të legjislacionit shqiptar dhe marrveshjes së përbashkët të palëve.

E) Kontributi me tokë shqiptare dhe godinat nuk mund të vihen hipotekë apo të përdoren peng.

Neni 8

Aprovimi nga Qeveria

Ndërmarja e përbashkët do të fillojë aktivitetin mbas marrjes së aprovimit prej Qeverisë Shqiptare ,e cila autorizon dhe aprovon të gjitha lidhjet dhe kushtet e ndërmarjes së përbashkët.

Neni 9

Ndarja e fitimeve

A. Fitimet e ndërmarjes së përbashkët do të rezultojnë pas zbritjes prej volumit total tregëtar vjetor të gjitha detyrimet që lidhen me aktivitetin e saj duke përfshirë shpenzimet ,lëndë të parë,furnizimin,paga, blerje paisjesh,investime,amortizim,rezerva,fonde ,taksa dhe shpenzime të të tjera financiare.

E. Partnerët do të marrin pjesë në fitimet dhe humbjet e ndërmarjes së përbashkët në përputhje me përqindjen e pjesëmarrjes në kapitalin e ndërmarrjes së përbashkët.

Neni 10

Aksionet

Të gjitha aksionet e ndërmarj s së përbashkët do të regjistrohen dhe diskutohen vetëm mes partnerëve nëqoftëse partnerët nuk do të bien dakort së bashku .

Çdo aksion do të ketë të drejtën e një vote në të gjitha çështjet që kanë të bëjnë me aktivitetet e ndërmarjes së përbashkët.

Neni 11

Të punësuarit

Partnerët bien dakort se çështjet e punës që kanë të bëjnë me punësimin e punëtorëve do të trajtohen nga ndërmarja e përbashkët përmes kontratave individuale me çdo punëtor.

Ndëmmarjes së përbashkët nuk i kërkohet të njohë ndonjë këshill punëtor apo union punëtorësh të punësuar prej partnerit shqiptar apo prej ndërmarjes së përbashkët.

Neni 12

Përfundimi i afatit.

Kur ndërmarja ndalon aktivitetin ajo u shpërndan punëtorëve pjesën që mbetet të kapitalit dhe të ardhurave të ndërmarjes në bazë të përqindjes së pjesmarrjes në kapitalin e ndërmarjes mbasi të ketë shlyer të gjitha detyrimet ekzistuese.

Kontributet sipas ligjit u kthehen partnerëve që i kanë bërë këto kontribute për ndërmarjen.

Neni 13

Mbrotja e investimeve të huaja

A. Investimet e investitorit të huaj në ndërmarjen e përbashkët mbrohen nga shteti shqiptar sipas aktit për investimet e huaja.

B. Pjesa e fitimit e investitorit të huaj mund të transferohet jashtë shtetit në valutë të huaj pasi të jenë paguar eventualisht taksat në bazë të legjislacionit shqiptar me përjashtim të faktit që fitimet e ndërmarjes së përbashkët nuk u nënshtrohen taksave gjatë 5(pesë) viteve të para të veprimeve të ndërmarjes së përbashkët.

C. Në rast të privatizimit të biznesit të partnerit shqiptar pas nënshkrimit të kontratës,kjo kontratë vazhdon të ekzistojë dhe partneri italian ka prioritet për blerjen e biznesit dhe pasurive të partnerit shqiptar

D. Me aprovimin e kësaj kontrate ,partneri shqiptar vazhdon të ekzistojë si person juridik. Aktivitetet e tij komerciale dhe pasuritë di dhe të punësuarit sidoqoftë do të thithen nga ndërmarja e përbashkët .

E. Ndërmarja e përbashkët nuk mban përgjegjësi dhe nuk njeh ndonjë

detyrim financiar kundrejt bankës Kombëtare e Shqiptare apo ndonjë bankë tjetër ,apo institucion për ndonjë borxh të partnerit shqiptar para kri mit të ndërmarjes së përbashkët.

Neni 14

Arbitrimi

Palët janë marrë vesh të bashkëpunojnë dhe të udhëhiqen nga vullneti mirë në realizimin e objektivave të kontratës.

Në rast se del nevoja për arbitrazh për të zgjidhur ndonjë mosmarrve je në lidhje me interpretimin apo vlefshmërinë e kontratës ,kjo do të zgjidhet me gjyqësi ndërkombëtare të Arbitrazhit në Paris në përputhj me ligjin francez dhe procedurat e Qëndrës Ndërkombëtare Për zgjidhjen e mosmarrveshjeve për Investimet (ICSID)

Çdo partner cakton një arbitër dhe të dy arbitruesit caktojnë një të t -të dhe vendimi i të treve nuk mund t'i nënshtrohet diskutimit apo apeli mit.

Neni 15

Marrveshje në tërësi

Kjo kontratë përbën marrveshje të plotë të palëve në lidhje me ndërmar jen e përbashkët dhe zëvendëson të gjitha marrveshjet dhe përfaqësimet e tjera.

Neni 16

Gjuha

Kjo kontratë është hartuar në gjuhën shqipe dhe italiane,që kanë vlerë të njëjtë në interpretimin dhe zbatimin e kontratës.

Neni 17

Çështje të tjera

Të gjitha çështjet e tjera që nuk përmenden në këtë kontratë do të ven dosen me marrveshje të përbashkët të palëve ose mbi bazë të ligjeve në fuqi.

ILIR G.
- Korrik 1993

MARIA A
- Korrik 1993

Përshkrimi i rastit

A . Devid Meyer

Fa kulteti CLDP/ABACHELI

Seminar mbi krijimin e nd/jeve të përbashkëta Tiranë - Shqipëri

13 - 16 Korrik 1993

Vëzhtrim i përgjithëshëm

Nd/ja Shëetërore Shqiptare e Baterisë ("AL-Bat") e vendosur në Durrë Shqipëri dhe Kompani e Baterisë SLI në Bari ("Bari-Bat") e ndodhur në Bar Itali kanë dëshirë të krijojnë një nd/je të përbashkët për prodhimin e auto-motorrëve dhe mundësinë për lloje të tjerë të vënies në lëvizje,ndriçimi dhe ndezjes ("SLI") të baterive me acid dhe plumb në Durrës,Shqipëri gjati 12 muajve të fundit Maria A.

Drejtore e Bari-Bat bëri një vizitë në AL-Bat në pesë raste të vega ta dhe gjithshtu shëtiti vendin nga veriu në jug.Përveç takimeve me Ilir G drejtor i Al-Bat,Maria A u takua me zyrtarë të Qeverisë në Durrës dhe Tiranë të cilët e inkurajuan atë të investojë në Shqipëri.

Më 8 Korrik 1993,Maria A;u takua me Ilir G në Durrës dhe ranë dë në parim të procedojnë për krijimin e nd/jes së përbashkët.Al-Bat do të vë në dispozicion të nd/jes tokën,godinat dhe makineritë e pajisjet për prodh min e baterive dhe do ta ndihmojë Bari-Bat me aprovimin e Qeverisë;stimul dhe çështje të tjera në lidhje me organizimin dhe fillimin e punës së nd/j së përbashkët në Shqipëri.

Bari-Bat do të kontribuojë me pajisje për prodhimin e baterive të cilat aktualisht përdoren për prodhimin e baterive SLI në Bari.Përveç k saj Bari-Bat do të vërë në dispozicion të nd/jes para,kredi,lëndë të parë teknologji dhe shërbime teknike dhe drejtimi.

Nd/ja e përbashkët do të funksionojë me të punësuar nga Shqipër dhe Italia.Maria A i tha Ilir G se ajo do që dhe ai të punojë për nd/je e bashkët.

Pas takimit të tyre më 8 Korrik 1993,Ilir G u dha lajmin e mirë qeveritarëve në Durrës dhe Tiranë.Ato shpejt planifikuan një ceremoni për 16 Korrik 1993 për të shpallur krijimin e nd/jes së përbashkët.Iliri gjit shtu takoi një mikun e tij jo jurist në Ministri dhe i kërkoi që të përga tiste një formular standart të kotratës për nd/jen e përbashkët.Miku i Ilirit gjeti një model kontrate për nd/jet e përbashkëta në një dosje në Ministri dhe nga fundi i javës përgatiti kontratën për nd/jen e përbashkë dhe statutin e nd/jes së baterisë në Durrës.Iliri e lexoi kontratën ditën Hënë më 12 Korrik 1993 dhe menjëherë ja dërgoi atë Maria A së bashku me nj letër përmes së cilës e informoi Maria A për ceremoninë e planifikuar të 16 Korrikut 1993 për të shpallur krijimin e nd/jes së përbashkët.Me marrj e letrës së Ilirit dhe kontratës së propozuar Maria A thiri djalin e saj

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Mario,[illegible] kontaktoi avokatin e kompanisë,Mario B dhe informoi nënën e tij se ata do të ndodheshin në Tiranë mëngjesin e ditës tjetër.Ora tani është 10^{30} më 13 Norrik 1993 dhe Maria A,Marlo A dhe Mario B janë duke pirë kafe në Hotel Tirana dhe po diskutojnë për nd/jen.Maria A sapo e pyet Marlon dhe Marion për mendimin e tyre rreth kontratës për nd/jen e përbashkët dhe letrën e Ilirit.Ajo i pyeti:"Mos ka ndonjë arsye që unë nuk duhet të nënshkruajë kontratën në ceremoninë e ditës së Premte?"

Në të njëjtën kohë,Iliri dhe anëtarët e tjerë të Bordit Drejtues të Al-Bat takohen me zyratrë të ndryshën të Ministrisë.Janë edhe 2 juristë prezent në mbledhje.Njëri është Mak K jurist në Ministri dhe tjetri është Meko P jurist privat i ftuar në Durrës,të cilit ju kërkua të punonte si këshilltar për nd/jen Al-Bat.Konsensusi është arritur se një nd/je e përbashkët në Bari-Bat është e dëshirueshme për disa kushtin pikëpyetje nëse kontrata për nd/jen e përbashkët duhej ndryshuar që të përshtatet me ligjin shqiptar dhe të mbrojë interesat e Al-Bat dhe të Republikës së Shqipërisë.

Fakte rreth Al-Bat.

1.Al-Bat është nd/je shtetërore pa pronar privat.Megjithëse ka patur diskutime në lidhje me privatizimin e Al-Bat asgjë nuk është arritur edhe më tej nga faza e diskutimit.Disa nga punonjësit e Al-Bat kohët e fundit i kanë dërguar peticion Qeverisë për asistencë financiare dhe kërkonin që atyre tu jepet të paktën pjesë në pronësi.Ata kërkojnë që të thonë fjalën e tyre për të ardhmen e Al-Bat në mënyrë që të mbrojnë punën e tyre.

2.Al-Bat ende prodhon bateri SLI për automobila dhe kamiona, por ndeshet me probleme të mpenjta financiare dhe të prodhimit. Prodhimi ka rënë në më pak se 500 bateri në ditë.Pajisjet e Al-Bat janë mbi 20 vjeçare dhe bazohen në teknologjinë Ruse të dalë jashtpërdorimit Për shkak të kushteve financiare gjithnjë në keqësim Al-Bat po has vështirësi në gjetjen e lëndës së parë si plumb,kasa baterish,dhe acid sulfurik.Edhe nëse gjenden fondet për lëndë të parë nuk ka raste oportune në trequn e huaj për bateritë e Al-Bat sepse ato nuk përshtaton cilësinë me bateritë që gjenden në treg.Në mënyrë që të mbijetojë Al-Bat duhet të ketë makineri dhe pajisje e teknologji moderne.

3.Al-Bat ka vështirësi për të paguar fuqi punëtore që i ka mbetur megjithëse numuri i punëtorëve u reduktua nga 175 në 100.Ilir G bëri çështë e mundur të mbante punëtorët më të kualifikuar shumë prej të cilëve kanë përgatitje elektrike,mekanike apo kimike.Megjithëse punëtorët e Al-Bat janë teknikisht të përgatitur dhe të arsimuar,drejtusit e nd/jes dhe punëtorët kanë pak ose nuk kanë përvojë për të

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punuar dhe konkuruar në ekonominë e tregut.

4.Pajisjet për prodhimin e baterive të Al-Bat funksionojnë por kanë nevojë për riparim.Riparimet bëhen gjithnjë e më të vështira për shkak të mungesës së pjesëve të këmbimit.Në qoftë se Al-Bat ndalon prodhimin dhe eliminohet nuk ka treg për pajisjet e saj për shkak të vjetërsisë dhe daljes jas t përdorimit.Asnjë blerës nuk mund të paguajë më tepër se sa "vlerën si vjetërsirë" të pajisjes. Megjithëse është e vështirë të përllogarisësh vlerën e pajisjeve mendimi është se vlera e saj nuk i kalon 200 mijë dollarë US.

5.Al-Bat ka katër godina të vendosura në pronat e saj.Çdo godinë zë 4000 m2 sipërfaqe në përdorim.Vetëm një prej godinave përdoret aktualisht për prodhimin e baterive.Në këtë godinë ndodhen edhe zyrat e personelit drejtues dhe administrativ. 2 godinat e tjera janë bosh dhe godina që mbetet përdoret si magazinë për pajisjet dhe mjete lëvizë Megjithse godinat kanë nevojë për riparime ato janë funksionale dhe me strukturë të fortë.

6.Al-Bat ka përafërsisht 60 ha tokë të ndarë në tre hapësira. Veprimet për prodhimin e baterive bëhen në një sipërfaqe përafërsisht 15 ha.Në veri të sektorit të baterive jnnë 15 ha të tjerë.Një shkrirës sekondar plmubi punonte në këtë sektor më parë,po veprimet u ndërprenë disa vjet më parë dhe pajisja për dhrkrirje o çmontua dhe u transferua prej sektorit.Pjesa tjetër prej 30 ha shtrihet në jug të sektorit të prodhimit të baterive.Kjo hapësirë është e pazhvilluar dhe përfshin tokë që shtrihet deri në det.Punëtorët dhe familjet e tyre shpesh shkojnë atje për të pushuar,notuar dhe kënaqen në plazhin dhe bukuritë e natyrës që e rrethojnë atë.

Sipërfaqja e sektorit të mëparshëm të shkrirjes së plumbit është e ndotur me plumb,mërkur,kadmium dhe arsenik si rezultat i grumbullimit dhe thyerjes së baterive të vjetra dhe nga përmbajtja e bramcës dhe ùbeturinave të tjera.Shtrirja e ndotjes nuk dihet.Ka një rrezik që kjo ndotje mund të ndikojë në ujrat nëntokësore të zonës.

Zona e prodhimit të baterive mund të ketë nivele relativisht të larta plumbi në tokë në vende të caktuara,por këto nivele nuk përbëjnë ndonjë rrezik imediat për shëndetin e njerëzve dhe të mjedisit

Zona e pazhvilluar në jug besohet se është e mbrojtur nga ndotja nga barrierat natyrore dhe largësia prej veprimeve të baterisë.

Fakte rreth Bari-Bat.

1.Bari-Bat eshte doge e formuar rishtazi e Bari Pateri Nderkombetare n nje kompani e madhe per prodhimin e baterive e krijuar prej te shoqit(v dekur) te Maria a.Bari -Bat u krijua me minimumin e mundeshem t kapita lit [illegible] ligji italian.U formua me qelimin e vetem per te krijua nderm rrje te perbashket me vendete Europes lindore.Bri- bateri inter nacional do te kontribuoje me kapital shtese ne menyre qe Bari-Bat te mund te arrije te siguroje kapitalin e kerkuar per ndermarrje te per bashket

2.-Maria A dhe tre femijet e saj Anna Karlo dhe Dominik jane pronare te Bari-Bateri Nderkombetare.Maria zoteron 49% te kompanise dhe Anes Karlos dhe Domenikes u takon nga 17% sejcilit.Vetem Maria dhe Karlo punojne ak tivisht.Ana esht profesoreshe per histori dhe Domenik shkruan tregime dhe poezi.

3.-Maria A eshte 65 vjeç dhe ka ndermend te qendroje ne pension vitin qe vjen.Ajo me sukses e ka drejtuar Ban- Barib nderkombetar qysh prej vdekjes se te shoqit 10 vjet te shkuara,por pothuajse eshte gati qe tja kaloje Karlos(44) vjeç drejtimin e plote te biznesit.Maria A ne fillim kerkon ta shohe Ndermarrjen e Perbashket te Baterise Durres te krijuar dhe te ketet filluar nga prodhimi.Ajo ka interes te veçante ne kete pro jekt sepse nena e nenes se saj ishte lindur prane Durresit dhe ajo me kenaqesi kujton tregimet e gjyshes per jeten e saj ne Shqiperi.Ne nje udhetim te saj te koheve te fundit, ne Shqiperi Maria mesoi se 2 kushur inj te larget te saj banojne ne Durres dhe punojne per AL-Bat.

4.-Nje aresye tjeter pse Maria nuk ka dale ne pension me pare eshte dhe fakti se ajo ka rezerva per stilin e drejtimit te Karlos.MegjitheqeK Karlo enjeh industrine e prodhimit te baterivepo aq sa çdo njeri ne nde rmarrje.Maria ka marre ankesa nga punonjesit ,konkuruesit furnitoret dhe klientet se Karlo eshte i ashper,madje dhe i pa sjelle ndonjehere.M

Maria Aka qene nje punedhenese dashamirese sikurese dhe burri i saj.Ajo gjithemone ka treguar interes te veçante per punonjesit dhe komunitette ku gjenden uzinat e kompanise.Kohe para se te vdiste burri i Marise krijoi nje fondacion te veça nte qe mirrte kontribute çdo vit prej fitimeve te Bari-Bateri nderkombetare.Ky fondacion ndihmonte te vobektit dhe u jepte bursa dhe asistence tjeter financiare te nevojshme punetoreve te kompanise dhe familjeve te tyre

5Karlo eshte i ndergjegjshem per thashethemet per te por i hedh poshte ato si te pa drejta.Ai beson se Bari bateri nderkombtare duhet te ndryshoj menyren e drejtimit te biznesit me qellim qe ~~të~~ mbijetoje dhe lulezoje ne ekonomine globale.Karlo mendonse kompania duhet te reduktojeme numu rin e punetoreve,nderprese rritjene e pagave pakesoje perfitimet per,punet oret,dhe te krijoje aleanca strategjike ne Itali dhe jashte.Ai beson se mbijetesa duhet te jete objektivi kryesor i Bari-Bat Nderkombetare dhe fitimi i qendrueshem eshte kyçi i mbijeteses dhe punes per punetoret e kompanise.

6.-Megjthese Maria lejon Karlon te marre vendime strategjike dhe te dites, Karlo ka degjuar nga motra dhe vellai i tij se negofte se ai nuk dote jete indershem ne krijimin e ndermarrjes se perbashket me AL-Bat,nena e tij ka ndermend ta shesik kompnine nje konkuruesi Gjerman.Karlo eshte kundra shitjes se menjehereshme por di qe vellai dhe motra e tij do te mbeshtesin nenen.

7.-Bari Bateri nderkombetar eshte ballafaquar me nje sere problemesh te re ja ne vitet 1990.Tregu i Baterise ne Itali dhe Europen Perendimoree eshte i pershtatsnem.Konkurence eshte rritur ne permasa dramatike dhetepricat mbi fitimet jane ne renie.Tregu i Baterise SLI eshte rritur me me pak se 20% ne vit dhe konkurentet luftojne me njri tjeterin per aksione me te medha te nje ndermarrje me pak me leverdi.

8.-Bari-Bat nderkombetar ka patur dhe probleme te veçantane Bari Itali Kompnia ka nje shkrires sekondar te vjeteruar ne Bari qe furnizon

Shkriresi do te kerkonte sasi te madhe kapitali bernda 3 deri 5 vjeteve te ardheshme.Rregullore kundra ndotjes jane rigoroze ne Komunitetin Europjandhe Italia duke ndjekur vendet e tjera te K.E. eshte perqendruar ne shkriresit e plumbit.Shkriresit duhet te ripaisen me instrumenta per kontrollin e shkrirjes dhe ndotjes Karlo e di qe mund te jete e veshtire te rinovoje lejet per mejdisin edhe negoitese ai do te instaloje tekno llogji te re kontrolli per ndotjen.Shkriresi eshte vendosur ne nje hapesire te vogel tokedhe eshte prane shkollave ,kishes dhe nje lagje banimi Per me teper per kompanine eshte e veshtire dhe e kushtueshme te siguroj bateri te vjetra me acid dhe plumb apo mbeturina plumbi per shkriresin Keshilltaret financiare dhe te mejdisit kane rekomanduar qe shkriresi te mbyllet apo te zhvendoset.

9.-Uzina e baterive ne Bari si e vetme e ketij lloji ne kompanine Bari -Bateri nderkombetar ka paisjet prodhuese me te vjeteruara nga te tre uzinat dhe ka kosto mete larte prodhimi se sa 3 uzinat e tjera.Paisjet n ne Bari jane 8-vjeçare.Kjo paisje eshte mirembajtur si e re dhe e afte p per te prodhuar 4000 ose me shume bateri ne dite por kerkon intesite te madh pune ne tregun e sotem dhe me efikasitete shume mete ulet se sa paisjet ne uzinat e tjera.Megjithese vlera e zevendesimit te paisjeve ne Bari eshte larte Karlo e di se eshte veshtire te gjenden bleres per p paisje kaq te vjeteruara.Karlo ka frike se paisjet nuk mund te shiten kaq lehte dhe beso se do te jete fat ne se kompania do te realizonte ekujva lentin prej 2.000.000 U.S.D ne se gjendet dhe kur te gjendet bleresi. Kostoja origjinale prej 6.000.000. U.S.D. e paisjeve eshte çvleresuar plotesisht.

10.-Uzinat e tjra te kompanise kane paisje kontrolli me mikroproçesore te te njejtit nivlapo edhe me te mira ne industrine e llojit tevet. Bari ka potencen per pjese te paisjeve per derdhjen e grilave te bateriv dhe ka edhe patenten per proçesin e mirembajtjes elloit te avancuar te baterive me acid pa plumb.Perveç kesaj Bari ka zhvilluar programe

uzina.Teknollogjia e kompanise dhe sekretet e tregetise perfshijne speci fikime produktesh progedura prodhimi dhe veprimi,te shena projektesh, specifikime te performances,procedura testesh dhe parametra te kontro llit te cilesise.

11.Bari- bBateri nderkombetare po shqyrton 3 opsione

a)Te shese paisjet ne Bari dhe te huazoje ekujvalentin 12.000.000. U.S.D. qe te ripaise uzinen teresisht me paisje per prodhimin e baterive modern.b)Ta mbylle uzinenx ne Bari perkohesisht,te shese paisjet dhe te presse qe te permiresohet gjendja e tregut para vendimit per rihapjen apo ripajisjen e uzines.c)Rivendos uzinen ne shqiperi ose ne ndonje ven tjeter te Europes Lindore

12.-Karlo,kohet e fundit ka hartuar nje projekt me nje plan strategjik per Bari Bateri nderkombetare dhe Bari Bat

a.-Te pengohet konkurenti Gjerman i Baritp per te konkluduar letrén e pikesynimit me Al-Bat.Te vazhdohet me krijimin e Ndermarjes se perbashke midis Bari Bat dhe AL-Batdhe pajisjet per prodhimin e baterive ne Bari do te kaloje si kontribut per ndermarrjen e perbashket.Te vleresohet ky kontribut sa me afer vleres se 5.000.000. U.S.D.

B.-Te reduktohet menjehere numuri i punetoreve nga L00 ne 7o duke u afruar punetoreve ne Bari shanse per te punuar ne Durres dhe vendet qe do te mbeten te plotesohsn prej punetoreve aktualisht te punesuar ne AL-BatC

C.Te mbyllet uzina e Durresit afersisht per 60 dite,te instalohen pajis ne Bari,te riparohen dhe vihen ne perdorim pjese te pajisjeve te oksid te plumbit dhe shkrirjes se plumbit,rifillohen veprimet dhe brenda 6 muajve te arrihet nje nivel prodhimi me 4.000 bateri ne dite dhe peo dhimi te shitet ne Itali Shqiperi dhe ne vende te tjera me nje çmim me satar prej 3000 U.S.D. deri 3500 U.S.D. per bateri

).-T'i shitet lende e pare Bari-Bat prej burimeve te meposhteme:

1.-Plumb i ricikluar nga shkiresi sekondar i plumbit

pjese e Bari Bateri Ndërkombetar.

2;-Kasa baterish nga kompania e plastikes dege e Bari Bateri Nderkombetar

E.-Te jepet hua Kompanise se baterse Durres kapital pune per lende te par dhe shpenzime te tjera,te caktohet maksimumi i perqindjes te interesit te lejuar me ligjin dhe te siguronet ripagesa e ketij borxhi para se tebehet shperndarja e fitimeve te ndermarrjes se perbashket.

G;- Te siguronet legjislacioni mbrojtes,qe imponon tarifa doganore mbi baterite e sjella ne shqiperi nga Greqia,Turqia dhe vende te tjera.

F.Te sigurohen kontrata afat gjata me qeverine qe te furnizohen te gjitha agjensite ne qender dhe rrethe me bateri te prodhimit Shqipetar.

H.- Te sigurohet legjislacioni i favorshem i cili perjashton çdo forme takse mbi lenden e pare apo paisje e importuara prej kompanise se bateriv Durres.

I.-Te sigurohet heqja e taksave mbi fitimet e kompanise se BAt. Durres dhe interesit qe i jepet Bari -Bat.

J.-Te mbahet kontrolli mbi biznesin e kompanise se baterive Durres perf shire konrtollin mbi blerjen,veprimet te punesuarit,çmimet,shitjet, inter per aksionet bankare dhe vendime strategjike dhe te momentit.

K.- N.q.s. kompania e Bat Durres ka sukses ne nje mejdis te stabilizuar dh mikprites do te shtohet linja e dyte dhe e treete e prodhimit te baterive SLI;do te rritet llojshmeria dhe permasat e baterive SLI,dhe esht e mu ndeshme te filloje prodhimi i baterive industriale me acid dhe plumb ne nj godine te veçante qe eshte prone e AL-Bat.

L.-Te merret ekskluziviteti i kontrollit mbi mbledhjen e baterive te dala jashte perdorimit dhe mbeturinat e plumbit te mbledhura ne Shqiperi nga nga vende te tjera dhe te perdoret ky burim si lende e pare per ushqimin e shkriresit sekondar te plumbit ne Bari.Qe te arrihet ky qellim duhet zbatuar nje skeme speciale qe kerkon bashke punimme qeverine perveç kerke ses qe kompania te jete elire prej kontrolleve te eksportit,liçensave.

M.-N.q.s. do te naryshohen sasi te mjaftueshme te baterive te hedhura dhe

varur prej te pares,do te sillet shkrirësi sekondar i plumbit prej Bari ne Durres dhe te jepet tëke me qira,prej ndermarrjes se perbashket me afat te gjate me çmim te favorshem per degen e shkrirjes se plumbit ne Bari.Sis temi i pjurifikimit te acidit dhe gjendjes se mjedisitdo ti shtohet shkri resitqe dote riaktivizoje gjithe acidin sulfurik qe hyn nga baterite e hedhura me mbeturina apo biprodukte te pademeshme dhe ti shitet ky acid i rafinuar Kompanise se Bat.Durres.

N.-Brenda 4 apo 5 vjeteve te krijimit te kompanise se Baterive Durres do te blihen interesi i Al-Bat te ndermarrjes se perbashket me nje formu le te para vendosur bazuar ne bllokimin e vleresimit te pasurive te Kom panise se Bat Durres.

O.-Ne 5 deri 10 vjetet pas formimit te kompanise se bat Durreste shitet Kom pania e Bat Durres,shkriresi sekondar i plumbit dhe ndoshta e gjithe Ba ri Baterri ndërkimbetar nje konglomerati te madh Gjerman me çmim te bazu ar mbi shumfishin e fitimeve te konsideruara te Kompanise.Karlo nuk i ka diskutuar detajet e ketij plani me mamane e tij apo me Moris B.

HANDOUT 3

DOCUMENTING THE JOINT VENTURE

OUTLINE OF BASIC AND ANCILLARY JOINT VENTURE DOCUMENTS

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INTERNATIONAL JOINT VENTURE WORKSHOP
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INTRODUCTION TO THE QUESTION

"What documents are necessary or desirable in order to form, manage and operate a joint venture?"

The purpose of this workshop session is to explore the answer to that question.

Because each joint venture is unique, one cannot identify a "standard" set of documents that must be negotiated and prepared for every joint venture.

How then does one decide what documents are necessary or desirable for any particular joint venture?

A SUGGESTED APPROACH TO THE ANSWER

The answer to this question can be discovered through a three (3) step process:

1. **Focus on the business and legal objectives of the venturers.**

   As emphasized in the introduction to this workshop, the challenge faced by joint venturers and their advisors is to craft a set of joint venture documents designed to promote the business and legal objectives of the venturers.

2. **Identify the various business and legal relationships and types of transactions that will or may occur over the expected life of the joint venture.**

   These relationships and transactions include ones between and among:

   (a) the joint venture entity,

   (b) the individual venturers,

(c) affiliated or other parties related to the venturers,

(d) employees, officers, directors and owners of the venture or venturers, and

(e) outside third parties.

Each business and legal relationship and each business and legal transaction between or among these parties may suggest the need for a particular kind of joint venture document.

Examples of these relationships and related transactions include:

(a) Shareholder or partner relationships regarding ownership, transfer and voting of shares or partnership interests.

(b) Management relationships among officers, directors and owners of the venture and the various management and administrative bodies that shape the legal structure of the venture.

(c) Employer-employee relationships between the venture and officers, directors, shareholders, partners or other key employees regarding responsibilities and authority, compensation, benefits, conflicts of interest, non-competition, confidentiality, and other matters.

(d) Lender-borrower and other creditor-debtor relationships related to financing of the venture or other business transactions.

(e) Licensor-licensee relationships regarding patents, technology, trademarks, trade names and other intellectual property matters.

(f) Lessor-lessee relationships regarding real property, machinery and equipment, and other tangible personal property.

(g) Seller-purchaser relationships regarding the supply and purchase of fixed assets, raw materials, finished products, and other goods or merchandise.

(h) Other contractual relationships regarding technical assistance, general cooperation, construction, management, administration, marketing and other services.

3. Consider the legal structure of the joint venture.

The legal form of organization of the joint venture and applicable laws will influence what documents are necessary or desirable for the joint venture. Foreign and domestic general partnerships, limited partnerships, limited liability companies, joint stock companies and corporations will require different kinds of joint venture documents.

COMMONLY ENCOUNTERED JOINT VENTURE DOCUMENTS

The following list does not identify all of the possible documents that may be necessary in order to properly document any particular joint venture, but it does identify some of the most common basic and ancillary documents frequently encountered in joint ventures.

The fact that a document is identified as an ancillary document does not mean that it is optional or less essential than a document identified as a basic document. The facts and circumstances will determine whether any particular document is essential. Therefore, no significance should be attached to whether a document is listed as basic or ancillary.

BASIC DOCUMENTS

1. **Letter of Intent**

   Terms of Agreement

   Term Sheet

   Non-Binding Protocol

   Agreement in Principle

   Memorandum of Understanding

2. **Joint Venture Agreement**

   Teaming Agreement

3. **Partnership Agreement**

4. **Articles of Association**

   Articles of Incorporation

   Certificate of Incorporation

Statute

Charter

Deed of Company Formation

Notarial Deed

Founding Act or Documents

5. **Code of By-Laws**

6. **Shareholders or Stockholders Agreement**

Pre-Incorporation Agreement

Subscription Agreement

Stock Transfer Agreement

Buy-Sell Agreement

Stock Redemption Agreement

Option to Purchase or Sell Shares

Voting Trust Agreement

ANCILLARY DOCUMENTS

1. **License Agreement**

Patent License Agreement

Technology License Agreement

Trademarks, Trade Names and Copyright Agreement

Computer Software License Agreement

Intellectual Property Agreement

2. **Technical Assistance Agreement**

Management Agreement

Administrative Services Agreement

General Assistance or Cooperation Agreement

Manufacturing Agreement

Operating Agreement

3. **Supply Agreement**

Purchase Agreement

Equipment Sales Agreement

4. **Construction Agreement**

General Contractor Agreement

Construction Management Agreement

Architectural Services Agreement

Design-Build Agreement

Turnkey Project Agreement

Engineering Services Agreement

Construction Subcontracts

5. **Marketing Agreement**

Sales Agreement

Agency Agreement

Representation Agreement

Commission Agreement

Distribution Agreement

Franchise Agreement

6. Employment Agreement

Employee Inventions Agreement

Labor Union Agreement

Consulting Agreement

Professional Services Agreement

Brokerage or Finders Fee Agreement

7. Non-Competition Agreement

Covenant Not to Compete

Confidentiality (Nondisclosure) Agreement

8. Loan Agreement

Loan Commitment

Interim Financing Agreement

Line of Credit Agreement

Term Loan Agreement

Letter of Credit

Promissory Note

Guaranty

Mortgage

Security Agreement

Collateral Pledge Agreement

Escrow Agreement

Assumption of Liabilities Agreement

9. **Bill of Sale**

Assignment

Real Property Purchase Agreement

Real Property Deed

Easements

Rights-of-Way

Real Property Lease

Equipment Lease Agreement

Option to Purchase or Lease Property

10. **Legal Opinions**

Comfort Letters

Auditors' Opinions

Appraisals

Certificates

Resolutions

11. **Feasibility Study**

Business Plan

Financial Projections

Pro-Forma Financial Statements

Historical Financial Statements

Disclosure Schedules

12. **Permits**

Licenses

Grants

Concessions

Authorizations

Approvals

Visas

Waivers

Consents

Exemptions

Tax Holidays

Investment Treaties

Free Trade Agreements

Laws

Decrees

Regulations

Rulings

Decisions

Orders

13. **Insurance Policies**

Bonds

Indemnification Agreement

Equipment Warranties

Performance Guarantees

14. Other Documents

Third Party Contracts for the Supply, Sale or Purchase of Goods or Services

DISCUSSION QUESTION

What basic and ancillary documents are necessary or desirable in order to promote the business and legal objectives of the Durres Battery Company joint venturers?

DOKUMENTACIONI I NDERMARRJES SE PERBASHKET
PERSHKRIMI I DOKUMETEVE BAZE DHE NDIHMES TE NDERMARRJES SE PERBASHKET

A. David Meyer

FAKULTETI ABA CEELI/CLDP

SEMINAR NDLRKOMBETAR MBI NDERMARRJET E PERBASHKETA
TIRANE, SHQIPERI
13 –16 KORRIK 1993

HYRJE NE PROBLEM

"Çfarë dokumentesh janë të nevojshme ose të dëshirueshme për formimin, drejtimin dhe ecurinë e një ndërmarrjeje të përbashkët?".

Qëllimi i këtij seminari është të zbulojë përgjigjen e kësaj pyetje.

Meqenëse çdo ndërmarrje e përbashkët ka veçoritë e veta, ne nuk mund të përcaktojmë një numër "standart" dokumentesh për t'u diskutuar dhe përgatitur për çdo ndërmarrje të përbashkët.

Si të vendosim atëherë se çfarë dokumetesh janë të nevojshme ose të dëshirueshme për një ndërmarrje të përbashkët të veçantë?.

SUGJERIMI I NJE RRUGE PER PERGJIGJE

Përgjigja e kësaj pyetje zbulohet nëpërmjet një procesi të përbërë nga tre faza:

1. Përqëndrimi në objektivat ligjorë dhe të biznesit të palëve të ndërmarrjes së përbashkët.

Siç u theksua në hyrjen e këtij seminari, sfida që palët dhe këshilltarët e ndërmarrjes së përbashkët duhet të përballojnë është hartimi i një sërë dokumentesh të ndërmarrjes, me synimin që të shtyhen më tej objektivat ligjore dhe të biznesit të palëve të ndërmarrjes.

2. Përcaktimi i marrëdhënieve të ndryshme ligjore dhe të biznesit që do të vendosen ose mund të vendosen dhe llojet e veprimeve që do të kryhen ose mund të kryhen gjatë ekzistencës së mundshme të ndërmarrjes së përbashkët. Këto marrëdhënie dhe veprime përfshijnë midis tyre:

(a) entin ei ndërmarrjes së përbashkët
(b) palët e veçanta të ndërnmarrjes
(c) palët filiale ose të tjera të lidhura me palët përbërëse të ndërmarrjes së përbashkët
(d) punonjësit, nëpunësit, drejtorët dhe pronarët e ndërmarrjes ose palëve
(e) palë të treta të jashtme.

Çdo marrëdhënie ligjore dhe biznesi dhe çdo veprim ligjor e

biznesi midis ose ndërmjet këtyre palëve mund të ofrojë nevojën për një lloj të veçantë dokumenti të ndërmarrjes së përbashkët. Shembuj të këtyre marrëdhënieve dhe veprimeve lidhur me to përfshijnë:

(a) marrëdhëniet aksionere ose të ortakërisë lidhur me pronën, transferimin (e kapitalit) dhe ndarjen e aksioneve ose interesave të ortakërisë.

(b) marrëdhëniet e drejtimit midis nëpunësve, drejtuesve dhe pronarëve dhe organizmat e ndryshme drejtues e administrativ që formojnë strukturën ligjore të ndërmarrjes

(c) marrëdhëniet punëdhënës–punonjës midis ndërmarrjes dhe nëpunësve, drejtuesve, aksionerëve, ortakëve ose punonjësve të tjerë të rëndësishëm në lidhje me përgjegjësitë dhe autoritetin, shpërblimin, përfitimet e ndeshjen e interesave, jo–konkurencën, besimin dhe çështje të tjera.

(d) marrëdhëniet huadhënës–huamarrës dhe kreditor–debitor lidhur me financimin e ndërmarrjes dhe veprime të tjera të biznesit

(e) marrëdhëniet licence–dhënës dhe licencë–marrës lidhur me patentat, teknologjinë, markat, emrat tregtarë dhe çështje të tjera të karakterit intelektual

(f) marrëdhëniet qiradhënës–qiramarrës lidhur me pronën e patundshme, makinerinë, pajisjet dhe ndonjë pronë tjetër të rëndësishme personale

(g) marrëdhëniet shitës–blerës lidhur me ofertën dhe blerjen e pasurive të palujtshme, lëndëve të para, produkteve të përmbaruara, dhe të mirave të tjera materiale ose mallrave të tjera tregtare

(h) marrëdhënie të tjera kontratore lidhur me asistencën teknike, bashkëpunimin e përgjithshëm, ndërtimin, drejtimin dhe administrimin, tregtimin dhe shërbime të tjera.

3. Shqyrtimi i strukturës ligjore të ndërmarrjes së përbashkët.

Forma ligjore e organizimit të ndërmarrjes së përbashkët dhe ligjet e zbatueshme ndikojnë në faktin se çfarë dokumentesh janë të domosdoshme ose të dëshirueshme për ndërmarrjen e përbashkët. Ortakëritë e përgjithshme të huaja dhe vendase, ortakëritë e kufizuara, kompanitë me përgjegjësi të kufizuar, ndërmarrjet e përbashkëta aksionere dhe korporatat kërkojnë lloje të ndryshme dokumentesh të ndërmarrjes së përbashkët.

DOKUMENTET ME TE DOMOSDOSHME TE NDERMARRJES SE PERBASHKET

Lista e mëposhtme nuk përcakton të gjitha dokumentet e mundshme që mund të jenë të nevojshme me qëllim që të dokumentohet si duhet çdo ndërmarrje e përbashkët e veçantë, por ajo përcakton disa nga dokumentet bazë dhe ndihmës që ndeshen shpesh në një ndërmarrje të përbashkët.

DOKUMENTACIONI BAZE

1. Letra e qëllimit për marrëveshje
   Pikat kryesore të Marrëveshjes

Dokumenti i kushteve
Protokolli jo i detyrueshëm
Marrëveshja në parim
Memorandumi i mirëkuptimit.

2. Marrëveshja për ndërmarrjen e përbashkët
Marrëveshja për personelin

3. Marrëveshja e ortakërisë
4. Nenet e shoqërizimit
Nenet e bashkimit
Çertifikata (vërtetimi) e bashkimit
Statuti
Licenca (Leja)
Akti i formimit të kompanisë
Akti noterial
Akti ose Dokumentet e themelimit

5. Kodi i nënligjeve

6. Marrëveshja e aksionerëve dhe e pronarëve të kapitalit
Marrëveshja e parabashkimit
Marrëveshja e nënshkrimit
Marrëveshja e transferimit të kapitaleve
Marrëveshja për shitblerjen
Marrëveshja për rimarrjen e kapitaleve
Mundësia për blerjen ose shitjen e aksioneve
Marrëveshja për votbesimin.

DOKUMENTACIONI NDIHMES

1. Marrëveshja për licencën
Marrëveshja për licencën e patentës
Marrëveshja për licencën e teknologjisë
Marrëveshja për markat, emërtimin e tyre dhe të drejtën e prodhuesit për prodhimin dhe shitjen e mallit
Marrëveshja për licencën e software të kompjuterëve
Marrëveshja për aftësitë /kualifikimin profesional.

2. Marrëveshja për asistencën teknike
Marrëveshja për drejtimin /manaxhimin
Marrëveshja për shërbimet administrative
Marrëveshja për asistencën e përgjithshme dhe kooperimin
Marrëveshja për prodhimin
Marrëveshja për funksionimin

3. Marrëveshja për furnizimin
Marrëveshja për blerjen
Marrëveshja për shitjen e paisjeve

4. Marrëveshja për ndërtimin
Marrëveshja e përgjithshme kontratore

Marrëveshja për drejtimin e ndërtimit
Marrëveshja për shërbimet arkitekturore
Marrëveshja për projektim-ndërtimin
Marrëveshja për projektin e përfunduar
Marrëveshja për shërbimet inxhinjerike
Nënkontratat për ndërtimin

5. Marrëveshja për tregëtimin
Marrëveshja për shitjet
Marrëveshja për agjencinë/funksionimin
Marrëveshja për përfaqësimin
Marrëveshja për autorizimin
Marrëveshja për shpërndarjen
Marrëveshja për monopolin

6. Marrëveshja për punësimin
Marrëveshja për shpikjet e punonjësve
Marrëveshja për sindikatën e punonjësve
Marrëveshja për konsultimin
Marrëveshja për shërbimet profesionale
Marrëveshja për brokerimin

7. Marrëveshja për moskonkurimin
Detyrimi për të mos konkuruar
Marrëveshja për mirëbesimin (ruajten e sekretit)

8. Marrëveshja për huanë
Realizimi i huasë
Marrëveshja për financimin në kohë
Marrëveshja për linjën e kreditit
Marrëveshja për huanë me afat/kushte
Letër-krediti
Shënimi i premtimit/Nota e premtimit
Garancia
Hipoteka
Marrëveshja për sigurimin
Marrëveshja e garantimit me peng
Marrëveshja për shumën e pengut
Vendosja e marrëveshjes për përgjegjësitë

9. Kambiali i shitjes
Transferimi i pronës
Marrëveshja për blerjen e pronës së patundshme
Akti për pronën e patundshme
Pronat me të drejtë përdorimi
Të drejtat e rrugëkalimit
Marrëveshja për qiranë e pajisjeve
Mundësia për të blerë ose marrë me qira pronën

10. Mendime ligjore
Letrat e ndihmës
Mendimet e revizorëve

Vlerësimet
Vërtetimet/çertifikatat
Vendimet

11. Studimi i ecurisë/rentabilitetit
Plani i biznesit
Planifikimet financiare
Situacionet financiare
Situacionet financiare historike
Listat/afatet e ekspozeve

12. Lejimet
Licencat
Dhëniet
Lëshimet
Autorizimet
Miratimet
Vizat
Heqjet dorë
Pëlqimet
Përjashtimet (nga përgjegjësia e fajit)

Traktatet e ivenstimeve
Marrëveshjet për tregtinë e lirë
Ligjet
Dekretet
Rregulloret
Vendosja e rregullave
Urdhërat

13. Politikat e sigurimit
Kambialet
Marrëveshjet për zhdëmtimin
Garancitë e pajisjeve
Garancitë e punës

14. Dokumete të tjera

Kontratat e palës së tretë për furnizimin, shitjen dhe blerjen e mallrave dhe shërbimeve.

ÇESHTJE PER DISKUTIM

Cilat dokumente bazë ose ndihmës janë të nevojshme ose të dëshirueshme për të realizuar objektivat ligjore dhe të biznesit të kompanisë së përbashkët të kompleksit blegtoral në Durrës?

Sample Letter of Intent

1. Recitation of parties

2. Statement of purpose of parties in forming joint venture; statement as to what each of the joint venturers hopes to receive from the formation of the joint venture

3. Statement detailing what each of the parties will do prior to formation of the joint venture or what preliminary steps need to be taken, such as performing any feasibility studies or providing information relating to marketing issues, employee matters, etc.

4. Fundamental business terms of joint venture

5. Timetable for action

6. Statement that each party bears its own expenses

7. Exclusivity: statement that neither party will attempt to enter into negotiations with third parties with respect to the subject of the joint venture

8. Confidentiality undertaking

9. Statement that the Letter of Intent is not a legally binding agreement

10. Governing law for legal interpretation of the provisions of the Letter of Intent

12. Signature of Parties

MODEL I KARTES SE QELLIMEVE TE KONTRATES

1. Deklamim i paleve
2. Deklarim i qellimit te paleve ne formimin e firmes se perbashket (joint venture);deklarimi i objektit te perfitimit si rezultat i formimit te firmes se perbashket.
3. Deklarimi i detajuar i vaprimit te paleve perpara formimit te firmes se perbashket ose i hapave paraprake qe duhet te ndermerren, siç eshte perpilimi i nje studimi te mundshem lidhur me problemet e tregut,nepunesve e çeshtje te tjera.
4. Kushtet themelore te biznesit te firmes se perbashket
5. Afati i veprimeve
6. Deklarimi se seicila pale mban shpenzimet e veta
7. Ekskluziviteti:deklarimi se asnjera nga palet nuk do te perpiqet te hyje ne bisedime me pale te treta lidhur me subjektin e firmes se perbashket.
8. Afirmim i konfidencialitetit
9. Deklarimi se kjo Karte e Qellimeve te kontrates nuk eshte marreveshje ligjerisht e detyrueshme.
10. Nenet e Kartes se Qellimeve te kontrates intepretohen ligjerisht sipas ligjit ne fuqi.
11. Nenshkrimi i paleve.

Sample Letter of Intent

1. Recitation of parties

This Letter of Intent is signed on __ _____, 1993 between the City of XX and B Gas Company.

2. Statement of purpose of parties in forming joint venture; statement as to what each of the joint venturers hopes to receive from the formation of the joint venture

The municipal government of the City of XX wishes to introduce natural gas to the City of XX, and B Gas Company is an international integrated gas company with extensive experience in all aspects of the gas industry. The City of XX and B Gas Company agree that it is in their mutual interests to form a joint venture company which would own and operate the gas distribution system in the City of XX.

3. Statement detailing what each of the parties will do prior to formation of the joint venture or what preliminary steps need to be taken, such as performing any feasibility studies or providing information relating to marketing issues, employee matters, etc.

The City of XX will provide to B Gas Company all information that it has relating to the city gas project and will make available to B Gas Company, at such reasonable times and as may be deemed necessary by B Gas Company, relevant technical and managerial personnel to discuss the gas project.

4. Fundamental business terms of joint venture

The parties agree that any joint venture organized to undertake the ownership and operation of the natural gas distribution system in the City of XX will have the following terms, each to be more fully detailed in the documentation to be entered into by each of the parties:

(a) the joint venture will be a joint stock company formed under Albanian law, owned 51% by the City of XX and 49% by B Gas Company.

(b) B Gas Company will have the right to appoint the management and to have operating control of the joint venture.

(c) all profits of the joint venture will be reinvested for a period of 5 years; thereafter profits will be distributed in accordance with ownership interest without any preference or priority.

(d) no ability to transfer interest in joint venture for a period of 10 years except under certain deadlock circumstances to be more fully described in the final joint venture agreement.

5. Timetable for action

Within two weeks from the date hereof the City of XX and B Gas Company will meet together to determine the nature of the work to be carried out by each of them in evaluating the feasibility of the project. If that evaluation proves to be favorable, then within two weeks from receiving the favorable evaluation the parties will hold a second meeting where they will prepare a firm proposal for the formation and operation of a joint venture company in which both would participate in the manner set forth in paragraph 4 above in order to own and operate the natural gas distribution system in the City of XX.

6. Statement that each party bears its own expenses

Each of the City of XX and B Gas Company will pay their own internal and out of pocket costs, including without limitation all legal fees, associated with carrying out the evaluation and formation of the joint venture. B Gas Company will bear the financial cost of all feasibility studies in connection with the formation of the joint venture.

7. Exclusivity: statement that neither party will attempt to enter into negotiations with third parties with respect to the subject of the joint venture

Neither of the parties will commence discussions with any third parties with the intent of entering into a cooperative agreement relating to the subject matter of this Letter of Intent prior to December 31, 1993.

8. Confidentiality Undertaking

Each of the City of XX and B Gas Company undertakes for the benefit of the other that it will not without the prior written consent of the other disclose to any third party any information relating to the joint venture which shall be identified by the City of XX or B Gas Company as being confidential.

9. Statement that the Letter of Intent is not a legally binding agreement

This Letter of Intent shall not create any legal right or obligation on either the City of XX or B Gas Company.

10. Governing law for legal interpretation of the provisions of the Letter of Intent

This Letter of Intent shall be governed by the laws of _____.

12. Signature of Parties

Signed by _____
on behalf of the City of XX

Signed by _____
on behalf of B Gas Company

Overview of Key Joint Venture Agreement Clauses

CLAUSES RELATED TO THE FORMATION OF THE JOINT VENTURE

Parties and Recitals

Definitions

Sample contract language:

"Agreement" shall mean this Joint Venture Agreement, as amended, supplemented, restated or otherwise modified from time to time.

"Shares" shall mean the ordinary shares of the Company at any time outstanding.

Business Purpose

Conditions to Closing

CLAUSES RELATED TO THE FINANCING OF THE JOINT VENTURE

Capitalization and Shareholding

Sample contract language: The aggregate share capital of the Company as of the date of formation will be LEK 100,000. The capital will be divided into 1,000 ordinary shares each having a nominal value of LEK 100. Shareholder AA will own 51% of the shares and Shareholder BB will own 49% of the shares.

Non-Cash Capital Contributions

Future Capital Contributions

Sample contract language:

Future Capital Contributions. Should the Supervisory Council decide, in furtherance of the business objectives of the Company, to raise additional capital for the Company through the issuance of new shares, the Supervisory Council shall determine the valuation price for the new shares and shall offer the opportunity to subscribe for such new shares to the shareholders ratably in accordance with their then-existing holdings of shares. Each shareholder shall use its best efforts to provide its ratable portion of the necessary funds; however, should any shareholder be unable to subscribe

for its full ratable portion of the new shares, the Supervisory Council shall offer the opportunity to subscribe for such unclaimed shares to those shareholders which have indicated their intention to subscribe for their ratable proportion of the new shares.

CLAUSES RELATED TO THE MANAGING AND OPERATION OF THE JOINT VENTURE

Shareholders' Meetings

Supervisory Council

Sample contract language:

Membership of the Supervisory Council. The Company shall be governed by a Supervisory Council consisting of six members. Shareholder AA shall appoint two of the members, Shareholder BB shall appoint two of the members and the employees shall appoint two of the members as provided by Albanian law.

Managerial Board

Sample contract language:

Duties of the Managerial Board. The conduct of the business of the Company is the responsibility of the Supervisory Council, who shall administer the business and all the property of the Company, including without limitation entering into contracts and transactions within the scope of the objectives of the Company, as more fully set forth below.

Major Decisions

Dividend Policy

Sample contract language: Unless otherwise agreed by the Supervisory Council pursuant to Section _____ herein, the maximum percentage of the Company's profits allowable under applicable law shall be declared as a dividend to the Shareholders in proportion to their paid up capital.

CLAUSES RELATED TO THE TRANSFERRING OF OWNERSHIP AND TERMINATION OF THE JOINT VENTURE

Prohibition on Sales of Shares During Term of Agreement

Prohibition on Encumbrances or Liens over Shares

Sample contract language:

No shareholder shall, except with the prior written consent of the other shareholder, create or permit to subsist any lien over, or grant any option or other rights over or dispose of any interest in, all or any of the shares held by it (other than by a transfer of shares explicitly in accordance with the provisions of this Agreement).

Permitted Transfers

Term of Agreement

CLAUSES RELATED TO RESOLVING JOINT VENTURE DISPUTES

Deadlock

Termination of Agreement

Sample contract language:

6.1 General. If after the date of formation of the Company any Shareholder (the "Terminating Shareholder") shall have been overruled in respect of any three consecutive Major Decisions in accordance with the provisions of Section 3.4, then the provisions of Section 6.2 shall apply.

6.2 Termination.

(a) Within 60 days after the occurrence of an event described in Section 6.1, the Terminating Shareholder shall deliver to the other Shareholders a notice electing to sell to the other Shareholders, pro rata, all of the shares of the Company owned in the aggregate by the Terminating Shareholder (a "Sale Notice"). The sale price of the relevant shares shall be the Fair Market Value thereof. Any such sale shall be undertaken in accordance with the procedures described in Section 6.2(b) hereof. Should any Shareholder decline to purchase its ratable portion of the Shares offered by the Terminating Shareholder, such Shares shall be offered on the same terms to the Shareholder which accepted the offer contained in the Sale Notice. Should none of the other Shareholders agree to purchase the Shares of the Terminating Shareholder pursuant to the Sale Notice, then the Shareholders shall cooperate in achieving the prompt and orderly dissolution of the Company and ratable distribution of its assets to the Shareholders.

Arbitration of Disputes

OTHER MISCELLANEOUS CLAUSES

Non-Competition

Sample contract language:

Each of the Shareholders agrees that for so long as it is a shareholder of the Company, it will not, directly or indirectly (including through affiliates and other related enterprises) enter into activities in Eastern Europe which at such time compete with the activities of the Company.

Confidential Information

Sample contract language:

Each shareholder agrees to keep in strictest confidence all information relating to or acquired from any other shareholder in connection with the performance of this Agreement or any agreement provided for herein, or through participation in the ownership or management of the Company Each shareholder agrees that it will not publish, communicate, divulge, disclose or use any information described in the preceding sentence without the prior written consent of each other shareholder, except as expressly provided herein.

No Agency Relationship Created

Notice Addresses

Choice of Governing Law

Submission to Jurisdiction

Conflict with Statutes or other Agreements

Licenses of Intellectual Property

PARAQITJA E KLAUZOLAVE KYCE TE MARREVESHJES SE FIRMES SE PERBASHKET

Klauzola qe lidhen me formimin e firmes se perbashket

Palet dhe deklamimet

Percaktimet

Model i gjuhes se kontrates :

"Marreveshje" do te thote

qe klauzolat te shtohen,te rregullohen apo te ndryshohen kohe pas kohe.

"Aksione" do te thote aksionet e zakonshme te kompanise qe kane vlere ne çdo kohe.

Klauzola qe lidhen me financimin e firmes se perbashket

Kapitali dhe aksionet

Model i gjuhes se kontrates:

Kapitali i perbashket aksionar i kompanise ne diten e formimit do te jete 100000 leke.Kapitali do te ndahet ne 1000 aksione te zakonshmeseicila duke pasur nje vlere prej 100 leke.Aksionari A. do te kete 51% te aksioneve,kurse B. 49%.

Nuk lejohet kontributi kapital me çek.

Kontributet ne kapital ne te ardhmen.

Model i gjuhes se kontrates :

Nese keshilli i mbikqyrjes vendos,ne perputhje me objektivat e biznesit te kompanise;qe te rritet kapitali nepermjet blerjes se aksioneve te reja, dhe ofron mundesine per te kontribuar ne keto aksione ne perputhje me gjendjen e tyre ekzistuese. Çdo aksionar duhet te vere te gjitha forcat qe te jape pjesen e tij te fondeve te nevojshme,megjithate,nese ndonje aksionar nuk mund te kontriboje ne menyre te plote per aksionet e reja,Keshilli mbikqyres ofron mundesine per kontribim aksionareve te tjere te cilet e kane

Klauzola qe lidhen me drejtimin dhe veprimin e firmes se perba

Mbledhjet e aksionareve

Keshilli Mbikqyres

Model i gjuhes se kontrates :

A Anetarsia e Keshillit Mbikqyres .Kompania duhet te drejtohet nq Keshilli Mbikqyres i perbere nga 6 anetare.Aksionari A. duhet te caktoje 2 nga anetaret;aksionari B. duhet te caktoje 2 anetare te dhe nepunesit duhet te caktojne 2 anetaret e tjere sipas ligjit sh

Bordi i drejtuesve

Detyra te bordit te drejtuesve

Veprimtaria e biznesit te kompanise eshte nen pergjegjesine e Ke shillit Mbikqyres?icili do te administroje te gjitha te ardhurat dh pasurine e kompanise,duke perfshire pa limit,edhe hyrjen ne kontrat dhe transaksione brenda sferes se objektit te kompanise,siç pershk het me hollesisht me poshte.

Vendimet themelore

Politika e dividentit

Model i gjuhes se kontrates:

Me perjashtim te rasteve kur nuk eshte rene dakord nga Keshilli Mbikqyres ne baze te saksionit_____,perqindja maksimale e fitimit kompanise sipas ligjit ne zbatim,do te deklarohet si divident i aksionareve ne proporcion me kapitalin e tyre te paguar me pare.

Klauzola qe lidhen me transferimin e pasurise dhe permbylljen e firmes se perbashket.

Ndalohet shitja e aksioneve gjate afatit te marreveshjes.

Ndalohen hipotekimi ose mbajtja peng e aksioneve.

Model i gjuhes se kontrates:

Asnje aksionar nuk mund te kete (me perjashtim te rasteve kur aksionari tjeter jep pelqimin me shkrim)té krijojé ose té jejojé té dr ta té posedimit té çfarédo interesi mbi té gjitha ose ndonjé nga aks onet e shoqerise(vetem ne rastin e transferimit te aksioneve ne perp thje me nenet e kesaj marreveshjeje).

Transferim i lejuar

Kushte te marreveshjes

Klauzola qe lidhen me zgjidhjen e mosmarreveshjes ne firmen e perbash

Pezullimi

Permbyllja e marreveshjes

Model i gjuhes se kontrates:

N.q.s. pas dates se formimit te kompanise,çdo aksionar kundershtoh ne 3 pika themelore te marreveshjes ne perputhje me nenet 3 dhe 4 te sanksionit,atehere hyjne ne zbatim nenet e sanksionit 5.

Permbyllja

Brenda 60 diteve pas ndodjhjes se ngjarjes se pershkruar ne seksio- in 6/1,aksionari ,te gjitha aksionet firmes te zoteruara ne total nga aksionari.(Shenimi per shitjen).Cmi i shitjes se ketyre aksioneve do te kete vleren normale te tregut. do shitje e tille do te ndermerret ne perputhje me procedurat e per- hkruara ne 6/2.Nese ndonjeri nga aksionaret nuk pranon te shese pjese tij te aksioneve,te ofruara nga aksionari permbylles(ai qe eshte undershtuar),atehere keto aksione do ti ofrohen me te njejtat kushte ksionarit i cili me paree ka pranuar oferten ne çmimin e shitjes. ese asnjeri nga aksionaret e tjere nuk bie dakord te shese aksionet aksionarit terminator sipas çmimit te shitjes,atehere keta kooperojn r te arritur nje zgjidhje te shpejte e te drejte te kompanise (shper

Klauzola te tjera te ndryshme

Jo konkurrence

Model i qjuhes se kontrates:

Seicili nga aksionaret bie dakord qe sa kohe qe vepron si' ne kompani,ai nuk do te hyje direkt apo indirekt(perfshire ke alet dhe ndermarrjet e tjera ndihmese)ne aktivitet me Europer e cila ne kete kohe konkurron me aktivitetin e kompanise.

Informacion konfidencial

Model i qjuhes se kontrates/:

Cdo aksionar pranon qe te mbaje konfidence te plote per te infformacionet qe lidhen ose merren nga aksionaret persa i pe veprimit te kesaj marreveshjeje ose çdo marreveshje qe behet persai perket pjesmarrjes ne drejtimine kompanise.Cdo aksiona kord qe te mos publikoje,komunikoje,bej te njohur ose perdore formacion te pers kruar me pare pa patur me pare lejen e shkr aksionareve te tjere,perveç rasteve te dhena deri tanu.

Shpallja e adresave

Zgjedhja e ligjit udheheqes

Zbatimi i juridiksionit

Konflikte me statute ose marreveshje te tjera

A PRIMER ON REVIEWING AND DRAFTING JOINT VENTURE DOCUMENTS

©A. David Meyer
ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

TEN (10) GOALS OF A JOINT VENTURE DOCUMENT OR CLAUSE

PREMISE: An "Ideal" Joint Venture Document or Clause Should:

- Promote the Objectives of Your Client Over Time
- Not be Detrimental to the Objectives of Your Client Over Time
- Promote the Objectives of the Other Venturer Over Time Without Sacrificing the Objectives of Your Client
- Clearly Assign Rights and Obligations to Each Venturer
- Clearly Identify and Allocate Risks to Each Venturer
- Communicate the Same Meaning to Each Venturer and Outside Third Parties
- Be Consistent With Other Related Documents and Clauses
- Be Capable of Being Performed by Each Venturer in Accordance With its Terms
- Be Consistent With Applicable Law
- Be Enforceable from a Practical and Legal Perspective

A PRIMER ON REVIEWING AND DRAFTING JOINT VENTURE DOCUMENTS

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INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

CHECKLIST OF TWENTY FIVE (25) PRELIMINARY QUESTIONS TO ASK YOURSELF WHEN REVIEWING OR DRAFTING A JOINT VENTURE DOCUMENT OR CLAUSE

QUESTIONS REGARDING OBJECTIVES OF THE DOCUMENT OR CLAUSE

1. **Does This Joint Venture Document or Clause Promote the Short Term and Long Term Business and Legal Objectives of my Client?**
   - **Is it Drafted to Help my Client Achieve its Objectives?**
   - **Does it Give Appropriate Weight to the Priority of my Client's Objectives?**
   - **Does it Protect my Client From Adverse Contingencies?**
2. **Does This Joint Venture Document or Clause Promote the Short Term or Long Term Objectives of the Other Venturer in a Manner That is–**
   - **Consistent With the Objectives of my Client?**
   - **Inconsistent With the Objectives of my Client?**
3. **Is This Joint Venture Document or Clause–**
   - **Detrimental to the Short Term or Long Term Objectives of my Client?**
   - **Detrimental to the Short Term or Long Term Objectives of the Other Venturer?**
   - **So Detrimental to any Venturer That it Foretells the Failure of the Venture?**

4. **Is This Joint Venture Document or Clause Necessary or Beneficial?**

   - **Is it Required for any Business or Legal Reason?**
   - **How Important is it to my Client?**
   - **How Important is it to the Other Venturer?**
   - **What Will my Client Gain or Lose if it is Eliminated?**
   - **What Will the Other Venturer Gain or Lose if it is Eliminated?**
   - **Does it Communicate Useful Information?**

5. **Are There Alternatives or Options to This Joint Venture Document or Clause That Should be Considered?**

   - **What Alternatives or Options may Achieve the Objectives of This Document or Clause in a More Effective or Less Costly or Less Cumbersome Manner?**
   - **What is my Best Available Alternative to This Document or Clause?**
   - **What Will my Client Gain or Lose if Another Alternative or Option is Selected?**
   - **What Will the Other Venturer Gain or Lose if Another Alternative or Option is Selected?**
   - **Is There an Opportunity to Create Additional Value or Gains for Each Venturer by Selecting Another Alternative or Option?**

QUESTIONS REGARDING ALLOCATION OF RIGHTS, OBLIGATIONS AND RISKS

6. **What Specific Rights and Obligations Does This Joint Venture Document or Clause Assign or Allocate–**

   - **To my Client?**
   - **To the Other Venturer?**
   - **To Both Venturers Jointly?**
   - **To Outside Third Parties?**

7. **Does This Joint Venture Document or Clause Clearly Identify–**

   - **What Each Venturer is to do?**
   - **How the Venturer is to do it?**
   - **When the Venturer is to do it?**
   - **At Whose Expense the Venturer is to do it?**
   - **What Happens if the Venturer Does not do it–**
     - **At All?**
     - **In a Timely Manner?**
     - **Properly?**

8. **Does This Joint Venture Document or Clause Clearly Identify and Address all Material Business and Legal Risks and Contingencies Associated with its Subject Matter?**

   - **What Foreseen and Unforeseen Risks and Contingencies are Covered by or Omitted From This Joint Venture Document or Clause?**
   - **How Manageable are These Risks and Contingencies?**

9. **Does This Joint Venture Document or Clause Allocate Risks to Each Venturer–**

   - **Clearly and Precisely?**
   - **In a Manner Consistent With the Objectives of my Client?**
   - **To the Venturer Best Able to Manage or Bear the Risks?**
   - **Fairly and Reasonably?**

10. **What Adverse Consequences May Occur to my Client if This Joint Venture Document or Clause is Not Changed?**

    - **How Serious are the Possible Consequences?**
    - **What is the Worst Thing that Can Happen?**
    - **What are the Probabilities of Occurrence of These Adverse Contingencies?**

- Can my Client Manage or Bear These Risks and Their Probable Consequences?

- Can This Document or Clause be Changed to Eliminate, Minimize or Reallocate any of These Possible or Probable Risks or Adverse Consequences?

    - To What Extent Will any Change Result in a Gain or Loss in Benefits to my Client or the Other Venturer?

    - What is the Price or Cost of any Proposed Change as Compared to the Benefits?

QUESTIONS REGARDING UNDERSTANDING OF THE DOCUMENT OR CLAUSE

11. Does or Will This Joint Venture Document or Clause Clearly Communicate the Same Information and Meaning Now and Over Time to–

    - You and Your Client?

    - Each Key Officer, Director, Manager and Owner of Your Client?

    - The Other Venturer and Your Client?

    - The Other Venturer and Each of its Advisors and Key Officers, Directors, Managers and Owners?

    - Outside Third Parties Such as Government Agencies, Financial Institutions, Judges or Arbitrators?

    - The Heirs, Successors and Assigns of the Venturers?

12. Can This Joint Venture Document or Clause Be Understood, Interpreted or Construed in More than One Way?

    - How Can Multiple Meanings or Misunderstandings be Avoided by Redrafting This Document or Clause?

    - Is the Subject Matter of Each Clause in This Document Consistent With the Descriptive Title Given to the Clause?

        - Should the Title be Renamed?

- Should Part of the Subject Matter of This Clause be Moved to Another Clause or Covered in a Separate Clause of its Own?

- Does This Clause Belong in This Document or is Some Other Basic or Ancillary Document?

13. Is This Joint Venture Document or Clause Drafted in a Manner That Facilitates Understanding and Translation Into Another Language?

    - Is it too Long or Complex?

    - Can the Entire Document or Clause be Eliminated Without Losing any Important Benefits?

    - Can Long Articles or Paragraphs be Broken Down Into Shorter Ones?

    - Can Long Sentences be Broken Down Into Shorten Ones?

    - Can a Sentence be Written in Fewer or Simpler Words Without any Loss of Information?

14. Does This Joint Venture Document or Clause Contain any Misstatements or Material Omissions of Business or Legal Information?

    - Is it Likely to Mislead or Confuse any Venturer or Third Party?

    - What is Missing From This Document or Clause That Should be Included?

    - Are all Exhibits and Other Documents Referred to or Incorporated in This Document or Clause Complete and Available for Review Prior to Final Review, Approval or Execution of This Document or Clause?

    - Does it Intentionally or Inadvertently Fail to Address any Business or Legal Right, Obligation, Problem, Opportunity, Risk or Contingency That Should be Addressed?

    - What Serious Consequences may Result it is Not Changed to Correct the Misstatements or the Omissions?

15. Is This Joint Venture Document or Clause Consistent With–

    - Other Clauses Within the Same Document?

- Other Related Basic and Ancillary Joint Venture Documents?
- Customs, Practices, Terms of Art and Terminology Common in the Business or Industry of the Venture?
- Previous Drafts of the Same Document or Clause?
- Any Letter of Intent, Heads of Agreement, Term Sheet or Memorandum of Understanding?
- Feasibility Studies, Financial Projections, Business Plans, Prospectuses, Offering Circulars, Descriptive Brochures, or Similar Documents Describing the Proposed Venture?
- Applications, Approvals, Authorizations, Consents, Permits, Licenses or Similar Documents Filed or Issued by any Venturer, Government Agency or Other Third Party?
- Previous Correspondence or Other Exchanges of Information Between or Among the Venturers?
- Other Representations, Warranties, Assurances or Understandings Between or Among the Ventures Whether Written or Oral, Formal or Informal, or Express or Implied?

QUESTIONS REGARDING PERFORMANCE OF THE JOINT VENTURE DOCUMENT OR CLAUSE

16. Who are the Parties to This Joint Venture Document?
    - What is the Legal Form of Organization of Each Venturer?
    - Is the Other Venturer the Same Business Entity Your Client Believes it to be?
        - Is it the Same Entity Referred to in Correspondence, Company Brochures, Correspondence, Annual Reports, Financial Statements, and Feasibility Studies?
    - Is the Other Venturer a Newly Created Entity or to be Created Specifically for the Purpose of This Venture?
    - Is the Other Venturer an Assignee of the Party who Negotiated the Venture or Signed a Preliminary Letter of Intent or Similar Agreement?

- Who are the Key Owners, Officers, Directors, Managers and Employees of Each Venturer?
- Who has the Right, Power and Authority to Sign Documents and Act on Behalf of Each Venturer?
- What is the Financial Condition (Assets, Liabilities, Equity and Income) of Each Venturer?
- What is the Business History and Reputation of Each Venturer and its Principals–
    - In the Proposed Line of Business of the Venture?
    - In Other Lines of Business?
    - In Other Joint Ventures?
    - With Major Suppliers and Customers?
    - With Employees?
    - With Banks and Other Lenders and Creditors?
    - With Government Authorities at Home and Abroad?

17. Who Should be Made Parties to This Joint Venture Document or to Other Related Basic or Ancillary Documents or Made Legally Bound to This Clause?
    - Should the Joint Venture Entity Become a Party After it Comes Into Existence?
    - Should any Parent Company, Subsidiary Company, Affiliated Company, or Key Owners, Officers, Directors, Managers or Employees of any Venturer be Made a Party or Otherwise Bound–
        - To This Entire Document?
        - To Selected Clauses?
        - To Other Related Basic or Ancillary Documents?
        - As a Principal?
        - As a Guarantor or Surety?

- Does This Joint Venture Document or Clause Contemplate or Require Performance or Action by a Third Party?
    - Who is Required to Obtain Such Performance From the Third Party?
    - What Happens if the Third Party's Performance is Not Obtained?
    - Should the Third Party be Added as a Party to This Document or Become Otherwise Bound to This Clause?

18. Is This Joint Venture Document or Clause Capable of Being Performed by Each Venturer in Accordance With its Terms?
    - Does Each Venturer Have the Resources Necessary to Perform Its Obligations and Make the Venture Successful Including:
        - Qualified Management and Key Employees?
        - Owners and Management Personally and Financially Committed to the Success of the Venture?
        - Legal Capacity and Authority?
        - Requisite Tangible and Intangible Assets?
        - Adequate and Available Financial Resources?
        - Other Special or Required Resources Such as the Support or Assistance of Outside Third Parties?

19. Does This Joint Venture Document or Clause Contemplate That any Venturer or Affiliated Company or Related Third Party Will Purchase From, Sell to, or Transact Other Business With the Venture ?
    - How Will the Equivalent of Arms Length Transactions be Assured?
    - How Will Conflicts of Interest be Avoided or Managed?

QUESTIONS REGARDING ENFORCEMENT OF THE JOINT VENTURE DOCUMENT OR CLAUSE

20. Does This Joint Venture Document or Clause Identify the Circumstances Under

Which a Venturer is Temporarily or Permanently Relieved From its Obligations Such as–

- Nonoccurrence of Conditions Precedent?
    - What Events or Conditions Must Occur or be Satisfied or Performed Before There is an Obligation to Perform Under This Document or Clause?
- Breach or Default by the Other Venturer?
- Force Majeure?
    - What Foreseen or Unforeseen Events Should or Should Not be Covered by the Definition of This Term?
- Government Action or Inaction?
- Impossibility of Performance?
- Economic Hardship or Commercial Impracticability?

21. What will be the Legal Status and Continued Viability and Effectiveness of This Joint Venture Document or Clause–

- After the Joint Venture Entity is Created?
- After Other Joint Venture Documents Come into Existence?
- If a Related Basic or Ancillary Joint Venture Document is–
    - Never Executed?
    - Materially Breached?

22. Is This Joint Venture Document or Clause Consistent with Applicable Laws?

- Does it Conflict with Applicable Company Law?
- Does it Conflict with Other Applicable Laws?
- It is Required by Applicable Law?
- Does it Omit Anything Required by Applicable Law?

23. Does This Joint Venture Document or Clause Incorporate or Provide For Dispute

Resolution Mechanisms That Provide Fair, Effective, Expeditious, Relatively Inexpensive, and Realizable Remedies for–

- Business Disputes or Legal Disputes That Require Immediate Resolution (Emergencies)?
- Small or Medium Size Disputes That do not Merit Expensive or Protracted Litigation or Arbitration?
- Large or Complex Disputes That Affect the Viability of the Venture?

24. Does This Joint Venture Document or Clause Create a Relationship, Mechanism or Institutional Framework That Promotes the Probability of Performance and Enforcement Without Litigation or Arbitration?

- Are There Built-In Incentives (Rewards and Sanctions) That Make the Document or Clause "Self-Enforcing" From a Practical Point of View?
- Before Invoking Litigation or Arbitration, What Practical Business or Contractual Remedies are Available if a Venturer Fails to Perform any Particular Obligation or Obligations or Otherwise Breaches this Document or Clause–
  - Suspension of Dividends or Other Payments to the Defaulting Venturer?
  - Right to Offset Against Other Amounts Owed to the Defaulting Venturer?
  - Suspension of Business With the Joint Venture or Defaulting Venturer?
  - Declaration of a Default Under Other Related Basic or Ancillary Joint Venture Documents?
  - Suspension of Performance of the Nondefaulting Venturer's Obligations–
    - Under This Document?
    - Under Other Basic or Ancillary Joint Venture Documents?
  - Suspension of the Defaulting Venturer's Voting Rights or Participation in Decision Making?

- Removal of the Defaulting Venturer as Managing Partner?
- The Right to Terminate the Venture?
- Dilution of the Defaulting Venturer's Ownership of Capital or Shares?
- The Right to Acquire the Defaulting Venturer's Interest in the Venture?
- The Right to Require the Defaulting Venturer to Purchase the Other Venturer's Interest in the Venture?

- Are any of These Remedies too Harsh or Inappropriate in Particular Circumstances?
- Should the Availability of Particular Remedies be Dependent on the Nature of the Nonperformance or Breach?
  - How Should this Document or Clause be Drafted to Specify What Remedies are Available for Specified Kinds of Nonperformance or Breach?
- Are Any of These Remedies Not Available–
  - From a Practical Point of View?
  - Without Going to Court or Arbitration?
  - Under Local or Applicable Law?
  - In an Arbitration Proceeding?
- Are the Available Remedies Adequate to Give the Nondefaulting Venturer the Relief it Needs Under the Circumstances?

25. If a Venturer Fails to Perform a Particular Obligation or Obligations or Otherwise Breaches a Joint Venture Document or Clause–

- What Legal or Equitable Remedies are Available for Such Nonperformance or Other Breach Through the Court System or Through Arbitration–
  - Compensatory Damages?

- Consequential or Incidental Damages?
- Indemnification?
- Liquidated Damages?
- Interest?
    - At What Rate?
- Attorney's Fees and Costs?
- Exemplary or Punitive Damages?
- Specific Performance?
- Temporary Restraining Orders?
- Preliminary or Permanent Injunctions?
- Attachment?
- Restitution?
- Rescission?
- An Accounting?
- Appointment of a Receiver, Conservator or Liquidator?
- Other Equitable Relief?

- Are any of These Remedies too Harsh or Inappropriate in Particular Circumstances?
- Should the Availability of Particular Remedies be Dependent on the Nature of the Nonperformance or Breach?
    - How Should this Document or Clause be Drafted to Specify What Remedies are Available for Specified Kinds of Nonperformance or Breach?

- Are Any of These Remedies Not Available–
    - From a Practical Point of View?

- **Without Going to Court or Arbitration?**
- **Under Applicable Law?**
- **In an Arbitration Proceeding?**

- **Are the Available Remedies Adequate to Give the Nondefaulting Venturer the Relief it Needs Under the Circumstances?**

-END OF CHECKLIST-

UDHEZUES PER RISHIKIMIN DHE HARTIMIN E DOKUMENTEVE TE NDERMARRJES SE PERBASHKET.

A. David Meyer

PROJEKTI ABA CEELI/CLDP SEMINAR PER NDERMARRJET EPRBASHKETA NDERKOMBETARE TIRANE SHQIPERI 13-16 KORRIK 1993.

10 QELLIME TE AKTIT TE KRIJIMIT TE NDERMARRJES SE PERBASHKET KUSHT/ Nje akt "Ideal" i ndermarrjas se perbashket duhet:

-Te nxise objektivat e klientit me zgjatje ne kohe.

-Te mos jete i demshem per objektivat e klieantit ne kohe.

-Te nxise qellimet e ndermarresit tjeter ne kohe pa sakrifikuar objektivat e kliantit.

-Te percaktoje qarte te drejtat dhe detyrimin e sejcilit ndermarres.

-Te identifikoje qarte dhe te caktoje riskun e sejcilit ndermarres.

-Te komunikoje te njejtin kuptim tek sejcili ndermares dhe jashte paleve t treta.

-Te jete i qendrueshem me te gjitha aktet dhe dokumentet qe kane lidhje me kete.

-Te jete ne gjendjeqe te zbatohet nga sejcili ndermarres ne perputhje me marreveshjet.

-Te jete ne perputhje me ligjet ne fuqi,te jete e zbatueshme ligjerisht dhe praktikisht.

2

-Perms cilave alternativa mund te arrihen objektiat e ketij d
-menti ne menyre me efektive me pak te kushtue-shme dhe me pak te
disfavoreshme?

-Cila eshte alternativa me e mire e mundeshme per kete dokument?

-C'fare humbet apo fiton klienti i im ne se zgjidhet nje opsion
tjeter?

-C'fare fiton apo humbet ndermarresi tjeter ne se zgjidhet nje
opsion tjeter?

-A ka ndonje shans per te krijuar vlera apo fitime shtese per sej
cilin ndermares duke zgjedhur nje alternative tjeter?

PYETJE NE LIDHJE ME CAKTIMIN E TE DREJTAVE DETYRIMEVE DHE RREZIQE

6.Cfare te drejtash dhe detyri e specifike cakton ky akt i ndermarrjes
perbashket-

-Per klientin tim?

-Per ndermarresin tjeter?

-Per te dy ndermarresit se bashku?

-Per palët e treta te jashteme?

7. A e percakton qarte ky dokument apo klauzole e ndermarrjes se perbashket :
   * Cfare duhet te beje secili ndermares ?
   * Si duhet ta beje ?
   * Kur duhet ta kryeje ndermaresi ?
   * Ne dem te kujt duhet ta beje ndermaresi ?
   * Cfare ndodh ne rast se ndermaresi nuk e ben :
     * Aspak ?
     * Ne kohe ?
     * Sic duhet ?
8. A percakton dhe a u drejtohet ky dokument apo klauzole e ndermarjes se perbashket te gjithe rreziqeve materiale te biznesit dhe atyre ligjore si dhe te papriturave te mundeshme ?
   * Cilet rreziqe dhe te papritura , te parashikuara dhe te paparashikuara perfshihen ose perjashtohen nga ky dokument apo klauzole e ndermarjes se perbashket ?
   * Deri ne cfare mase mund ti kontrollojme keto rreziqe dhe te papritura ?
9. A i percakton ky dokument apo klauzole e ndermarjes se perbashket rreziqet per secilin ndermares :
   * Qarte dhe sakte ?
   * Ne perputhje me objektivat e klientit tim ?
   * Per ndermaresin qe mund te kontrolloje dhe perballoje me mire rreziqet ?
   * Drejte dhe ne menyre te arsyeshme ?
10. Cfare pasoja te kunderta mund te kete klienti im ne rast se nuk ndryshohet ky dokument apo klauzole e ndermarjes se perbashket ?
    * Sa serioze jane pasojat e mundeshme ?
    * Cila eshte gjeja me e keqe qe mund te ndodhe ?
    * Cilat jane mundesite e ndodhjes se ketyre te papriturave te kunderta ?
    * A mund ti kontrolloje apo perballoje klienti im keto rreziqe dhe pasoja te mundeshme ?

* A mund te ndryshohet ky dokumen apo kjo klauzole ne menyre qe te eleminohen , minimizohen apo te ripercaktohen ndonje prej ketyre reziqeve te mundshem apo pasojave te kunderta ?
  * Ne cfare mase do te ndikoje cfaredo lloj ndryshimi shtimin ose pakesimin e fitimeve te klientit tim ose cilitdo ndermares ?
  * Cili eshte cmimi ose kostua e cdo ndryshimi te propozuar ne krahasim me fitimet ?

PYETJE LIDHUR ME MENYREN SE SI JANE KUPTUAR DOKUMENTI OSE KLAUZOLA

11. E percjell apo do ta percjelle qarte ky dokumen apo klauzole e ndermarjes se perbashket te njejtin informacion dhe mesazh tani dhe me kalimin e kohes tek
  * Ju dhe klienti juaj ?
  * Secili zyrtar kryesor , drejtor , manaxher dhe pronar i klientit tuaj ?
  * Ndermaresi tjeter dhe klienti juaj ?
  * Ndermaresi tjeter dhe secili prej keshilltareve , si dhe zyrtareve kryesore , drejtoreve , manaxhereve dhe pronareve ?
  * Palet e treta te jashteme si p.sh. agjencite qeveritare , institucionet financiare , gjykatesit dhe gjykatesit e arbitrazhit ?
  * Trashegimtaret , pasuesit ose te caktuarit nga ndermaresit ?

12. A mund te kuptohet , interpretohet apo perpilohet ky dokument apo klauzole e ndermarjes se perbashket ne disa menyra ?
  * Si mund te shmangen shumekuptimesite apo keq - kuptimet duke riperpiluar kete dokument apo klauzole ?
  * A eshte lenda e seciles klauzole ne kete dokument ne perputhje me titullin pershkrues te klauzoles ?
    * Duhet vene titull tjeter ?
    * A duhet te cvendoset nje pjese e kesaj klauzole ne

ne nje klauzole tjeter apo te perfshihet ne nje klauzole me vehte ?

* A i perket kjo klauzole ketij dokumenti apo perben dokument baze ose ndihmes ?

13. A eshte perpiluar ky dokument apo klauzole e ndermarjes se perbashket ne menyre te tille qe te lehtesoje te kuptuarit dhe perkthimin ne nje gjuhe tjeter ?

* Eshte shume e gjate ose komplekse ?
* A mund te eleminohet i gjithe dokumenti ose klauzola pa patur humbje te ndjeshme ?
* A mund te ndahen nenet ose paragrafet e gjate ne me te shkurter ?
* A mund te ndahen fjalite e gjata ne me te shkurtra ?
* A mund te shkruhet nje fjali me me pak fjale dhe me me pak fjale pa humbur informacioni ?

14. A permban ky dokument apo klauzole e ndermarjes se perbashket ndonje keqinterpretim apo mungesa te informacionit ligjor ose te biznesit ?

* Ekziston mundesia te ngaterroje ndonje ndermares apo pale te trete ?
* Cfare mungon nga ky dokument ose klauzole qe duhet perfshire ?
* A jane te gjithe provat materiale dhe dokumentet e referuara dhe te perfshira ne kete dokument apo klauzole te plota dhe te disponueshme per rishqyrtim perpara rishqyrtimit perfundimtar , miratimit apo zbatimit te ketij dokumenti apo klauzole ?
* A harron me qellim apo pa qellim ti drejtohet te drejtave ligjore ose te biznesit , detyrimit , problemit , rastit , rrezikut , ose te papritures te cilave duhet tu drejtohet ?
* Cilat jane pasojat serioze nese nuk korigjohen keqinterpretimet ose mungesat ?

15. A eshte ky dokument apo klauzole ne perputhje me :

* Klauzolat e tjera brenda te njejtit dokument ?

-Dokumenta te tjere [illegible] ihmes p katas?

-Dogana, praktikat kushtet per standarte dhe terminologjine e per
rur per biznesin ose industrine e ndermarrjes?

-Projektet e mepareshme te te njejtit dokument ose akt?

-Ndonje lateri tenti per marrveshje,çeshtje kryesore te marrev
es,dokument te kushteve apo memorandum mir kuptimi?

-Studimet e mundeshme,projektimet financiare,planet e biznesit,
prognozat,parkoret er ofertat,broshurat p rshkruese ose dokumen
te perafert qe pershkruajne ndermarrjen e propozuar?

-Zbatimet,aprovimet,autorizimet,pelqimet,miratimet,liçensato ose
dokumente tep perafert te depozituar ne dosje pse te keshuar ng
ndonje ndermarres,organ shtetror ose pale tjeter e trete?

-Korrespondence e mepareshme ose kembim tjeter informacioni midis
ose ndermjet ndermarresve?

-Perfaqesime te tjera,garancite sigurimet ose mirekuptimet midis
ndermjet ndermarresve me shkrim ose me goje,zyrtar ose jo zyrtar
i shprehur ose i nenkuptuar?

CESHTJE LIDHUR ME REALIZIMIN E DOKUMENTIT OSE AKTIT TE NDER
MARJES SE PERBASHKET.

16-Cilat jane palet ne dokumentin e kesaj ndermarrje te perbashket

-Cila eshte forma ligjore e organizimit te çdo ner.per.?

-A eshte ndermarresi tjeter in njejti ent biznesi qe klienti i j
aj shpreson te jete ?

-A eshte ai i njejti ent i permendur ne korrespondence,broshura
e kompanise,raportet vjetore situacionet financiare dhe studimet
mundeshme?

-A shte ndermaresi tjeter nje ent ikrijuar rishtas apo do te kri
johet vecanerisht per qellimet e kesaj ndermarrje?

ndermarrjen ose firmosi nje 1 tjer paraprake te lejllinit per tan veshje ose nje marreveshje te njjashme?

-Kush jane pronaret kryesore,zyrtaret menaxherat dhe punonjesit çdo ndermarresi?

-Kush jka kompetencat te drejtojn ose autoritetin per te firmosur dokumentet dhe akte n emer te çdo ndermarresi?

-Cila eshte gjendja financiare(Aktivitet,pasivitet,te ardhurat) e çdo ndemarresi?

-Cila eshte historia e biznesit dhe reputacioni i çdo ndermarres dhe drejtuesve?

-Ne linjen e propozuar te biznesit te ndermarrjes.

-Ne linja te tjera biznesi.

-Ne ndermarrje te tjera te perbashketa.

-Me furnizues dh. bleres kryesore ?

-Me punonjes?

-Me banka dhe huadhenes ose kreditore te tjere?

-Me autoritetet shteterore ne vend dhe jashte?

.7.-Kush duhen te behen pale ne kete dokument te ndermarrjes se perbashket ose ne dokumentet e tjer baze ose ndihmes perkates ose ligjerisht te detyrueshem per kete akt?

-A duhet enti ndremarrje e perbashket te behet pale pasi krijohet?

-A duhet nje kompani meme ,filiale dytesore ose pronaret kryesore zurtaret,drejtoret,manazhereto ose punonjesit e nje ndermarresi r te perbashket te behen pale ose te lidhen detyrimisht

.Me tere kete dokument?

.Me aktet e zgjedhura?

.Me dokumentet e tjere perkates baze ose ndihmes?

.Si kryetar?

.Si garantues ose sigurues?

.Kush kerkohet ta beje kete permbushje nga nje pale e tr

.C'ndodh ne se nuk sigurohet permbushja nga pala e trete

.A duhet pala e trete te shtohet si pale ne kete dokument

ose te jete e lidhur detyrimisht ne kete akt?

18.-A esht ky dokument ose akt i ndermarrjes se perbashket i mundeshem

tu realizuar nga çdo ndermarres ne perputhje me kushtet e tij?

-A i ka çdo ndermarres burimet e nevojshme per t. permbushur det

met e tij dhe ta beje ndermarrjen e sukseshme duke perfshire:

.Manazhim te kualifikuar dhe punonjes te afte?

.Pronare dhe manazhim personalisht dhe financiarisht te pr

shtuar per suksesin e ndermarrjes ?

.Aftesi dhe autoritet ligjor?

;Pasuri te domosdosme materjale dhe jo materjale?

.Burime financiare te mundeshme dhe te mjaftueshme?

.Burime te tjera te nevojshme ose te veçanta si perkrahja

asistenca e paleve te treta te jashteme.

19.-A e parashikon ky dokument ose akt qe nje ndermarres ose shoqeri filia

ose pale e trete do ti blejne e shesin ndermarrjes ose te bejne trnsak

te tjera me te?

.Si do te sigurohen transaksionet e duhura?

.Si do te shmangen ose zgjidhen perplasjet e interesave?

CËSHTJE TE ZBATIMIT TE DETYRUAR TE DOKUMENTIT OSE AKTIT TE NDERMARRJES

PERBASHKET.

20.-Ai percakton ky dokument ose akt i ndermarrjes se perbashket rrethanat

te cilat.....

nje partner eshte perkohesisht ose pergjithnje i çliruar nga obligime te tilla si:

*mosekzistenca e kushteve te meparshme

° cilat kushte ose ngjarje duhet te ndodhin, te plotesohen apo kryhen perpara se te zbatohet nje obligim sipas ketij dokumenti apo klauzole?

*shkelje ose mosplotesim nga partneret e tjere?

*force madhore?

°cfare ngjarjesh te parashikuara apo te papara shikuara duhet te mos mbulohen nga ky percaktim?

*veprim apo indikim i Qeverise?

*pamundesia e kryerjes?

*veshtiresi ekonomike apo joprakticitet tregetar?

21. Cili do te jete statusi ligjor si dhe qendrueshmeria ne vazhdimesi dhe efektiviteti i ketij dokumenti apo klauzole te nderrmarje te perbashket-

*pasi te jete krijuar entiti i ndermarrjes se perbashket?

*pasi te perpunohen dokumente te tjera te ndermarrjes se perbashket

*n.q.s. nje dokument kryesor apo ndihmes i nderm. se perbashket-

°s'ka ekzistuar asnjehere?

°eshte shkelur praktikisht?

22. A eshte ky dokument i ndermarrjes se perbashket ne perputhje me ligjin ne zbatim?

*a eshte ne konflikt me ligjin ne zbatim te kompanise?

*a eshte ne konflikt me ligje te tjera ne zbatim?

*a eshte i kerkuar nga ligji ne zbatim?

- Heqja e ndërrmarrësit të pasukseshëm nga bordi trejtues ?
- E drejta për të mbyllur ndërmarrjen ?
- Shkrirrja e pronësisë së kapitalit dhe aksioneve të ndërmarësit të mossukseshëm ?
- E drejta për të blerë interesin e ndërmarësit të pa sukseshëm në ndërmarje?
- E drejta për t'i kërkuar ndërmarësit të pa sukseshëm të blejë interesin e ndërmarrësit tjetër në ndërmarje ?
- A është ndonjë nga këto zgjidhje tepër e asht ër apo e papërshtatshme në rrethana të caktuara ?
- A duhet që zgjidhje të vecanta të varen nga natyra e mosaktivitet apo e shkeljes së ligjeve ?
- Si duhet të hartohet ky dokument apo klauzol për të specifikuar se c'far zgjidhjesh duhen për lloje të vecanta të mos aktivitetit apo shkeljes së ligjeve?
- A është ndonjë nga këto zgjidhje e pa pranueshme -
  - nga pikpamja praktike ?
  - pa shkuar në gjyq apo arbitrazh ?
  - Sipas ligjeve të vendit apo ligjeve në fuqi ?
  - në një procedur arbitrazhi ?
- A janë zgjidhje të mundëshme të përshtatshme për ta lehtësuar ndërmarrësin e pasukseshëm në rrethana të cakuara?

25. Nëqoftëse një ndërmarrës nuk arrin të respektojë një detyrim të caktuar ose shkel një dokument ose klauzol të ndërmarjes të përbashk
- Ç'farë zgjidhjesh ligjore të drejta mund të gjenden për këtë mos-aktivitet apo shkelje, nga ana e sistemit gjyqësor apo e arbitrazhit
  - dëmshpërblim kombesimi ?
  - dëmshpërblim i pasojës ose i rastit ?
  - Kompesim ?

- interesi ?
  - çfarë përqindje ?
- pagesa dhe snpenzimet për avokatin ?
- dëmshpërblim shëmbullor apo ndëshkues ?
- aktivitet i veçantë ?
- porosi përkohësisht të kufizuara ?
- urdhëra paraprake apo të përhershme ?
- atashim ?
- kompensim ?
- anullim ?
- llogaritje ?
- caktimi i një marrësi,koservuesi apo likuiduesi ?
- lehtësi tjetër ?

- A është ndonjë nga këto zgjidhje e tepër e ashpër apo e papërshtatshme në rrethana të caktuara ?
- A duhet që zgjidhje të veçanta të varen nga natyra e mosaktivitetit apo e shkeljes së ligjeve ?
- Si duhet të hartohet ky dokument apo klauzol për të specifikuar se çfarë zgjidhjesh duhen për lloje të veçanta të mosaktivitetit apo shkeljes së ligjeve ?
- A është ndonjë nga këto zgjidhje e pa pranueshme-nga pikëpamja praktike ?
  - pa shkuar në gjyq apo arbitrazh ?
  - Sipas ligjeve të vendit apo ligjeve në fuqi ?
  - në një procedur arbitrazhi ?
- A janë zgjidhjet të mundëshme të përshtatshme për ta lehtësuar ndërmarrësin e pasukseshëm në rrethana të caktuara ?

HANDOUT 6

KEY DECISIONS REQUIRING UNANIMITY OR SPECIAL MAJORITY

©Nancy Eller
ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

In order to retain control over certain fundamental decisions to be decided upon by the Supervisory Council of an Albanian joint venture company, often the joint venture participants will agree in advance on those decisions which require unanimous agreement by all the members sitting on the Supervisory Council (or which require the affirmative vote of at least one member on the Supervisory Council appointed by the minority shareholder.)

These "major decisions" may include any of the following types of decisions with respect to the joint venture company, as well as other decisions covering areas of concern to the minority shareholder:

(1) decisions as to approval of the company's annual and long-term budgets and profit target;

(2) decisions to distribute less than the maximum allowable amount of dividends to be paid out of the company's profit;

(3) decisions as to any proposal to the shareholders to increase or reduce the amount of share capital of the company;

(4) decisions as to the closure or termination of any significant factories, mines, plants, etc.;

(5) decisions to lay off at any point in time a significant percentage of the employees employed by the company;

(6) decisions as to transfer of all or substantially all of the assets of the company to any other person or legal entity;

(7) decisions as to any material change in the business of the company;

(8) decisions (other than those which pursuant to Albanian law have to be approved by the shareholders of the company) as to entry by the company into any contract with any shareholder or any affiliate of a shareholder

involving payments in respect of any transaction or series of related transactions or the sale of any property, where the payments or the property concerned has a value exceeding the equivalent in Albanian lek or any other currency of $_____;

(9) decisions as to proposals to the shareholders regarding dissolution of the company pursuant to Albanian law;

(10) decisions as to entering into, amending and terminating technical assistance and license agreements;

(11) decisions as to the granting or assumption by the company of any obligation in respect of any financial guarantee exceeding the equivalent in Albanian lek or any other currency of $_____;

(12) decisions as to approval of any plans of the company to make any expenditure or series of related expenditures exceeding the equivalent in Albanian lek or any other currency of $_____;

(13) decisions as to any material or significant investment in any corporation, partnership or other legal entity;

(14) decisions as to proposals to the shareholders regarding the amendment of the company's statutes;

(15) decisions as to the initiation or settlement of any litigation, arbitration or other judicial or administrative proceedings against any person or legal entity;

(16) decisions as to the settlement of, or the making or acceptance of any payment in connection with any claim by or against the company, whether or not such claim is the subject of litigation, arbitration or other judicial or administrative proceedings;

(17) decisions as to the appointment of the outside auditors of the company; and

(18) decisions as to the appointment of managers to the managerial board of the company.

Vendime kyç qe kerkojne unanimitet ose maxhorance speci

(te veçante).

Nanci Eller-Fakulteti ABA CEELI/CLPD.

Workshop mbi ndermarrjet e perbashketa internacionale

Tirana-Albania.

13-16 Korrik 1993.

Ne menyre qe te rruhet kontrolli mbi nje numur vendimesh baze te nga keshilli dreitues i nje ndermarrje shqipetare te perbashket,me s..pes et(apo pjesmarresit) not te jo te bien dakord ne avance per ato vendi kerkojne marrevshje unanime nga te gjithe antaret e Keshillit Drejtues ato q. kerkojne vote afirmative te te pakten prej nje antari te keshill drejtues te caktuar nga aksionare ne minorance.

Keto vendime madhore(kryesore) mund te perfshijne çdo njeren prej ve te meposhteme te vendimeve persa i perket ndermarrjes se perbashket vendimeve te tjera qembulojne fusha me interes te aksionareve ne minor

(1)Vendime qe kane te bejne me buxhetin afat gjate vjetor te nderma si dhe me qellimin e fitimit.

(2)Vendime per te shperndare me pak se maksimumi i lejuar te inte qe do te paguhet prej fitimit te ndermarrjes

(3)Vendime ne lidhje me propozimet e aksionareve per te rritur apo suar pjesen e kapitalit te ndermarrjes

(4)Vendime per te hequr nga puna ne nje kohe te caktuar nje perqi te konsiderueshme te te punesuarve prej kompanise.

(5)Vendime per mbylljen e fabrikave,minjerave,uzinave etj.

(6)Vendime per te transferuar te gjitha apo shumicen e pasurive t marrjes tek nje person apo grup personash juridik.

(7)Vendime per ndryshime materjale ne biznesin e ndermarrjes.

(8)Vendime(perveç atyre qe ne perputhje me ligjin Shqipetar duhe aprovohen prej aksionareve te ndermarrjes).qe kane te bejne me hyrjen e

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jne me pjesen si pas tyre aksionareve apo nje pere transaksionesh te lidhura q me shitjen e ndonja prone ku pjesent apo prona ne fjale ka nje vlere qe e kalon ekujvalentin ne leke shqiptar apo ndonje tjeter lloj valute (para ne llore).

(9). Vendime qe kane te bejne me propozime te aksionareve per te shkre ndermarrjen ne te te liqjeva shqipetare

(10). Vendime qe kane te bejne me kurjen, rushimin apo mbarimin e sistemeve teknike apo marreveshje ve mbi baze license.

(11). Vendime qe kane te bejne me dhenien apo marrjen mbi vehte te kompanise te detyrimeve ne lidhje me shumat financiare qe tejkalojne ekjvalentet ne leke Shqipetare apo ne valute te tjera

(1)Vendime ne lidhje me aprovimin e planeve te kompanise per te bere shpenzime apo nje numur shpenzimesh qe tejkalojne ekujvalentin ne leke Shqipetar apo ne valute te lloit tjeter

(13). Vendime ne lidhje me materjale apo investime te rendesishme ne cdo bashkepunim paternitet apo person tjeter juridik.

(14). Vendime ne lidhje me propozimet e aksionareve per amendamente ne statutin e ndermarrjes.

(15). Vendime per hapjen e padise; arbitrazhin apo ndjekje te tjera administrative dhe juridike kunder nje personi apo trupi juridik.

(16). Vendime per shlyerjen apo pranimin e pagesave ne lidhje me pretendimet e kompanise apo ndaj kompanis, pavaresisht ne se ky pretendim eshte subjekt i padise, arbitrazhit apo ndjekjeve administrative apo juridike.

(17). Vendime per caktimin e personave te jashtem qe kontrollojne zyrtarisht llogarite financiare te kompanise

(18). Vendime per caktimin e manaxhereve apo bordeve drejtues te kompanise

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HANDOUT 7

"HOW TO DRAFT AN ARBITRATION CLAUSE"

A. David Meyer
ABA CEELI/ CLDP FACULTY
INTERNATIONAL JOINT VENTURE WORKSHOP
TIRANA, ALBANIA
13-16 JULY 1993

SAMPLE "AD HOC" ARBITRATION CLAUSE

NEW STANDARD FORM OF ARBITRATION CLAUSE FOR USE IN CONTRACTS FOR TRADE AND INVESTMENT BETWEEN PARTIES OF THE UNITED STATES OF AMERICA AND THE RUSSIAN FEDERATION APPROVED 15 DECEMBER 1992

On 15 December 1992, the American Arbitration Association and the Chamber of Commerce and Industry of the Russian Federation prepared and approved an "Optional Clause for Use in Contracts in USA-Russian Trade and Investment-1992."

This new clause is included in the instructional materials for this workshop on "How to Negotiate, Structure and Document International Joint Ventures" for the following nine (9) purposes:

(1) To illustrate how the UNCITRAL Arbitration Rules may be used as a set of procedural rules in an "ad hoc" arbitration clause (i.e. an arbitration clause that does not provide for an international arbitration institution to administer the arbitration case);

(2) To illustrate how the UNCITRAL Arbitration Rules and international arbitration institutions may be utilized in an "ad hoc" arbitration clause without creating an arbitration clause that provides for "institutional arbitration;"

(3) To illustrate that the "appointing authority" under the UNCITRAL Arbitration Rules only appoints arbitrators if the parties fail to appoint the arbitrators in accordance with their agreement;

(4) To illustrate how the functions of the "appointing authority" under the UNCITRAL Arbitration Rules may be shared by such international arbitration institutions as the Stockholm Chamber of Commerce, the

American Arbitration Association, and Chamber of Commerce and Industry of the Russian Federation;

(5) To illustrate how to draft a "broad" form of binding arbitration clause that includes within its scope a wide range of disputes, controversies and claims;

(6) To illustrate how to incorporate "time limits" in an arbitration clause in a manner intended to facilitate the appointment of the arbitrators in a reasonably expeditious manner;

(7) To illustrate how two international arbitration organizations cover major topics that should be covered in an "ad hoc" arbitration clause that utilizes the UNCITRAL Arbitration Rules;

(8) To illustrate that a "standard" or "model" form of arbitration clause that covers major topics generally omits optional or special provisions that may or should be considered or included in an arbitration clause intended to fit the circumstances of the particular situation and serve the interests of the parties to the contract; and

(9) To illustrate that a "standard" or "model" form of arbitration clause intended for a particular purpose or class of contracts (trade and investment contracts between parties of the U.S.A. and the Russian Federation) may be used as one of the references for drafting a particular arbitration clause intended for another purpose, but should not be used without modifying it to fit the circumstances of the particular situation and serve the needs of the parties to the contract.

1992 OPTIONAL ARBITRATION CLAUSE (LONG FORM)

1. Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration. The award of the arbitrators shall be final and binding upon the parties.

2. The arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules as in effect on the date of this contract, except that in the event of any conflict between those Rules and arbitration provisions of this contract, the provisions of this contract shall govern.

3. The Stockholm Chamber of Commerce shall be the appointing authority, except for the specific provisions contained in paragraph numbers 5.1 and 5.2.

4. The number of arbitrators shall be three.

5. Each party shall appoint one arbitrator. If within fifteen days after receipt of the claimant's notification of the appointment of an arbitrator the respondent has not, by telegram, telex, telefax or other means of communication in writing, notified the claimant of the name of the arbitrator he appoints, the second arbitrator shall be appointed in accordance with the following procedures:

5.1 If the respondent is a natural or legal person of the Russian Federation, the second arbitrator shall be appointed by the Chamber of Commerce and Industry of the Russian Federation.

5.2 If the respondent is a legal or natural person of the U.S.A., the second arbitrator shall be appointed by the American Arbitration Association.

5.3 If within fifteen days after receipt of the request from the claimant, the Chamber of Commerce and Industry of the Russian Federation or the American Arbitration Association, as the case may be, has not, by telegram, telex, telefax or other means of communication in writing, notified the claimant of the name of the second arbitrator, the second arbitrator shall be appointed by the Stockholm Chamber of Commerce.

6. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal. If within thirty days after the appointment of the second arbitrator, the two arbitrators have not agreed upon the choice of the presiding arbitrator, then at the request of either party the presiding arbitrator shall be appointed by the Stockholm Chamber of Commerce in accordance with the following procedure:

6.1 The Stockholm Chamber of Commerce shall submit to both parties an identical list consisting of the names of all of the persons listed on the then-existing joint panel of presiding arbitrators established by the Chamber of Commerce and Industry of the Russian Federation and the American Arbitration Association.

6.2 Within fifteen days after receipt of this list, each party may return the list to the Stockholm Chamber of Commerce after having deleted the names to which he objects and having numbered any remaining names on the list in the order of his preference.

6.3 After the expiration of the above period of time, the Stockholm Chamber of Commerce shall appoint the presiding arbitrator from among the names not deleted on the lists returned to it and in accordance with the order of preference indicated by the parties.

6.4 Should no joint panel then be available, or if any other reason the appointment cannot be made according to this procedure, the Stockholm Chamber of Commerce

shall appoint as presiding arbitrator a person not on the joint panel who shall be of a nationality other than that of Russia or the U.S.A.

7. The arbitration, including the making of the award, shall take place in Stockholm, Sweden.

8. The parties will use their best efforts to agree on a single language for the arbitration proceedings, in order to save time and reduce costs. However, if the parties do not agree on a single language:

8.1 Each party shall present its statement of claim or statement of defence, and any further written statements in both English and Russian.

8.2 Any other documents and exhibits shall be translated only if the arbitrators so determine.

8.3 There shall be interpretation into both Russian and English at all oral hearings.

8.4 The award, and the reasons supporting it, shall be written in both Russian and English.

ABBREVIATED FORM OF THE 1992 CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the "Optional Arbitration Clause for use in contracts in U.S.A.-Russian Trade and Investment-1992" (Prepared by American Arbitration Association and Chamber of Commerce and Industry of the Russian Federation).

Si te perpilosh nje Akt Arbitrimit.

A David Meyer.

Fakulteti CLPD,ABA,CELI.

Seminar mbi Ndermarrjet e Perbashketa Nderkombetare.

Tirane Shqiperi

13-16 Korrik 1993.

Akti i Arbitrimit i Modelit "AD HOC"

-FORMULARI I SHKURTER I AKTIT TE ARBITRIMIT PER PERDORIM NE KONTRATAT E TREGETISE DHE INVESTIMET NDERMJET PALEVE TE SH.B.A. DHE FEDERATES RUSE APROVUAR M. 15 DHJETOR 1992.

Me 15 Dhjetor 1992 Shoqata Amerikane e arbitrimit dhe Dhoma e tregetise dhe industrise e federates Ruse perpunuan dhe aprovuan"Nje akt i padetyrueshem per perdorim ne kontratat per tregetine SH.B.A.-Rusi dhe Investimet 1992."

Nje aktmarreveshje perfshihet ne materjalet udhezuese per kete seminar rreth "Si te zhvillojme bisedime strukturojme dhe dokumentojme ndermarrjet e perbashketa nderkombetare" per 9 (nente) qellimet e meposhteme:

(1.)Te ilustrojme se si rregullat e arbitrimit UNCITRAL mund te perdoren si nje teresi rregullash proceduriale se nje aktmarreveshje arbitrimi ti "AD HOC"(qe do te thote arbitrim i cili nuk parashikon nje institucion arbitrimi nderkombetar per te drejtuar rastin e arbitrimit).

(2).Te sjellim shembuj se si rregullat e arbitrimit UNCITRALsi dhe i institucionet nderkombetare te arbitrimit mund te zbatohen ne nje Aktarbitrim "AD HOC"pa krijuar nje akt arbitrimi qe parashikon"Arbitrim Institucional"

(3).Te sjellim shembuj se si "nje Autoritet i emeruar" sipas rregullave te arbitrimitUNICITRAL vetem caktion arbitrues negoftese palet nuk mund te caktojne arbitruesit e tyre sipas marreveshjes se tyre.

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tacione arbitrimi [illegible] si Dhoma e Tregtise ne Stokolm,Shoqata Amerikane e Arbitrimit,Dhoma e Tregtise dheIndustrise se Federates Ruse.etj.

(5).[illegible] shembuj do ti per likonet nje [illegible] " i [illegible]" i [illegible] [illegible] ,qe perfshin [illegible] dispozonin e [illegible] shkalle [illegible] dhe pretendime.

(6).Te sillen shembuj se si te vendosen "limit e ne kohe" ne nje akt arbitrimi ne nje [illegible] per qellim te [illegible] e [illegible] e arbitruev relativisht [illegible].

(7)Te sillen shembuj se si dy organizata nderkombetare arbitrimi mbulojne [illegible] [illegible] perfshihen ne nje akt arbitrimi"AD HOC" qe zbaton rregullat e arbitrimit UNICITRAL.

(8).Te sillen shembuj se si nje formular "Standart"apo "model" i aktit te arbitrimit [illegible] mbulon [illegible] perjashto nene te veçanta [illegible] opsion [illegible] konsid[illegible] apo perfshir[illegible] ne nje akt te arbitrimi [illegible] pershtase rrethanat e nje situate te vecante dhe ti sher beje interesave te paleve [illegible] kontrate dhe

(9).Te sillen shembuj se si nje formular"Model apo "Standart" i aktit te arbitrimit [illegible] per qellime te vecanta apo [illegible] kontrat[illegible] kontr[illegible] [illegible] SH.[illegible] ne Federates Ruse) mund te perdoren si nje nga referencat per [illegible] perpiluar nje akt arbitrimi [illegible] qellim tjeter,por mund [illegible] perdorur per tu pershtatur rrethanave te nje situate te caktuar dhe te sherbeje nevojave te paleve ne kontrate

BEST AVAILABLE COPY

A[illegible] LL'([illegible] L[illegible]) 19[illegible]2.

([illegible]).

(1).C[illegible] mos marreveshje, kerkese apo pretendim qe del nga kontrata apo [illegible] lidhje me te apo shkelja perfundimit apo pavlefshmeria per kete arsye do te zgjidhet perpara arbitrimit. Vendimi i arbitruesve do te jete perfundimtar dhe detyruesh[illegible] per palet.

(2).Arbitrimi do te kryhet mbi baze te rregullave te arbitrimit UNCI[illegible] me efektivitet prej dates se kontrates, me perjashtim te rasteve kur lind nd[illegible] konflikt midis ketyre rregullave dhe neneve te Arbitrimit te parashikuara n[illegible] [illegible]ntrate.

Ne kete rast ceshtja zgjidhet ne baze te neneve te kontrates

(3).Dhoma e Tregetise e Stokolmit do te jete autoriteti i emeruar, me perjashtim te rasteve qe parashikojne nenet e veçanta te perfshira ne paragrafet Nr. 5.1 dhe 5.2

(4).Numuri i arbitruesve do te jendet atje.

(5).Cdo pale do te caktoje nje arbitrues.N.q.s. brenda 15 diteve.m[illegible] marrjes se deklarimit te pales pretenduese per caktimin e nje arbitruesi, pe[illegible] ndaj te cilit ngrihet ky pretendim nuk e ka shpallur emrin e arbitruesit [illegible] ai ka caktuar permes telegramit telex ose apo mjeteve te komunikimit me sh[illegible] arbitruesi i dyte do te emerohet ne perputhje me proçedurat e meposhteme:

5.1.N;q;s; personi ndaj te cilit ka pretendime eshte person fizik apo [illegible]ik nga Federata Ruse, arbitruesi i dyte caktohet nga Dhoma e tregetise dhe [illegible]ndustrise e Federates Ruse.

5.2 N;.q.s. personi ndaj te cilit ka pretendimi eshte person fizik a[illegible] juridik i SH.B.A. arbitruesi i dyte caktohet nga shoqata Amerikane e Arbi[illegible]mit

5.3N.q.s. 15 dite mbas marrjes se kerkeses se pales pretendues Dhom[illegible]

sipas rastit,nuk i k. shpallur palet pretenduese me telegram telex,fax ose
mjet tjeter komunikimi me shkrimi arbitruesi e dyte caktohet proj Dhoma e Trege
tise e Stokolmit.

(6).Te dy arbitruesit e caktuar n. kete menyre z jedhin arbitruesin e trete
i cili do t. jete ne cilesine e arbitruesit kryesor i gjyqit.N.q.s. brenda
30 diteve mbas caktimit te arbitruesit te dyte te dy arbitruesit nuk bien
dakord ne zgjedhjen e arbitruesit kryesor caktohet nga Dhoma e Tregetise e Stok
kolmit sipas progeduravе t. mepostme:

6.1Dhoma e Tregetise e Stokolmit do tu shperndaje te dyja paleve
nje liste identike te perbere me personat emrat e te cileve ndodhen ne listen e
perbashket ekzistuese te arbitruesve kryesore t. emeruar nga Dhoma e Tregetise
dhe Industrise e Federates Ruse dhe Shoqates Amerikane te Arbitrimit

6.2Brenda 15 diteve mbas marrjes se listes sejcila pale mund ta
kthejе listen tek dhoma e Tregetise e Stokolmit mbasi te kete hequr emrat per
te cilet ajo ka objeksione dhe mbasi t. kene vendosur numura perbri emrave te
tjere,sipas radhes se preferences.

6.3-Pas kaurimit t. kohes se siperpermendur Dhoma e Tregetise e
Stokolmit do te emeroje arbitruesin kryesor proj emrave te mbetur ne liste
sipas preferences se paleve

6.4-N;q.s. lista e perbashket nuk do te jete e vlefshme ose per
ndonje arsye tjeter emerimi nuk behet sipas procedures,Dhomae Tregetise se Stc
kolmit cakto.. si arbitrues kryesor nje person tjeter je nga lista e perbashket
je nuk do te kete as kombesi Ruse as kombesi Amerikane.

(7).Arbitrimi perfshire dhe vendimin e gjyqit,do te behet ne Stokolm
uedi. (8)Palet do te bejne perpjekje maksimale te bien dakord per gjuhen
jete punimeve t. Arbitrimit ne menyre qe te kurs jne kohe dhe te ulin kostoq.
ejjithate n.q.s. palet nuk bien dakord per uhen qe do t. perdoret:

6.1Sejcila pale do te perashtroje deklaraton pretenduese apo dekla- 4

sisë dhe Anglisë.

8.2Dokumentet e çdo prove materjale do të përkthehen në se ve set p.j Arbitruesve.

8.3Do të kete interpretim(përkthim) në të dyja gjuhët Ruisht dhe Angl në të gjitha dokumentet në goje.

8.4-Vendimi i gjykit dhe aresyet që e mbështesin etc do të shkruhen në Ruisht dhe Anglisht.

ZGJIDHJA E SHKURTËR E ARTIT 1992.

Çdo mosmarrëveshje,kundërshtim apo pretendim që del në lidhje me këtë kontratë,kundërshtim apo pretendim që del në lidhje me këtë kontratë,ose pri mosmarrëveshi i konës apo pavlefshmëria për këtë aresye zgjidhet permes arbitrimi në bazë të aktit opsional(Fakultativ) të arbitrimit për përdorimne kontratat ne Fregetine midis Ruside dhe SH.B.A.dhe investimet 1992

(Pregatitur nga Shoqata Amerikane e Arbitrimit dhe Dhoma e Tregetise dhe ndustrise e Federates Ruse).

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CEELI-CLDP ALBANIA WORKSHOP ON INTERNATIONAL JOINT VENTURES
JULY 13-16, 1993
LIST OF PARTICIPANTS

Name	Ministry/Organization
Enika Abazi	Ministry of Trade and Foreign Economic Relations (MTFER)
Majlinda Bako	MTFER
Gezim Banushi	MTFER
Anila Barbullushi	Ministry of Construction
Anila Bashllari	Assistant to the Vice Minister, MTFER
Enkela Bimbashi	MTFER
Petraq Buka	
Idriz Bylyku	Ministry of Agriculture and Food
Duane Craske	CEELI Legal Specialist
Kamela Daja	Business Development Div., MTFER
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Ali Dedej	Ministry of Transport
Agron Dhima	MTFER
Mikel Dushniku	MTFER
Monika Farka	MTFER
Emira Hakani	MTFER
Lulzim Hana	MTFER
Artan Hoxha	Minister to MTFER
Luiza Komomi	Ministry of Construction
Jorgji Kote	Center of Culture
Lanis Losho	Volunteers for Overseas Cooperation and Assistance (VOCA) Attorney
Genc Lubonja	Ministry of Transport
Ani Majmi	Student
Majlinda Maqellari	MTFER
Ramadan Marmullaku	SMELT (from Slovenia)
Aleksander Meci	Attorney
Elida Metaj	EUROTECH Foreign Economic Cooperation
Edmond Munxolli	Ministry of Agriculture and Food
Alan Osman	USAID Advisor to MTFER
Teri Pojani	MTFER
Pirro Progri	MTFER
Enver Qafmolla	Municipality Tirana
Triumf Qosej	MTFER
Natasha Saliqi	Ministry of Construction
Giorgio Sartori	CEC Consultant, Ministry of Agriculture and Food, Technical Support Unit
Robert Scott	VOCA Attorney
Evreke Serania	Ministry of Agriculture and Food
Mimoza Shabani	MTFER
Llazar Shaldia	Ministry of Agriculture and Food
Joyce Steiner	World Bank Consultant
Mentor Sternasi	Ministry of Agriculture and Food
Yllka Terihati	Ministry of Agriculture and Food
Russell Thirkel	U.S. Treasury Advisor, National Bank
Enkelejda Vorpsi	MTFER

Total Number of Participants - 44

Workshop invitati
and map

F T E S Ë

Z. Maflinda Bako

Jeni të ftuar në :

Seminarin mbi të drejten tregtare

Ku do të trajtohen probleme të tratativave dhe të krijimit të një "Joint venture,, (shoqëri e përbashkët), i cili do të mbahet nga 13 deri në 16 Korrik 1993, në Ministrinë e Tregtisë dhe të Lidhjeve Ekonomike me Jashtë, në Tiranë, duke filluar në ora 09.30.

Referues do të jenë specialistët; A David Mever; Esq nga O & C Corporation, Indiana polis; Nancy Eller, Esq nga Wite and Case, London; dhe Antonello Corrado, Esq, nga Studio Legale Associato, Roma

Ne përfundim të seminarit do të ketë një pritje

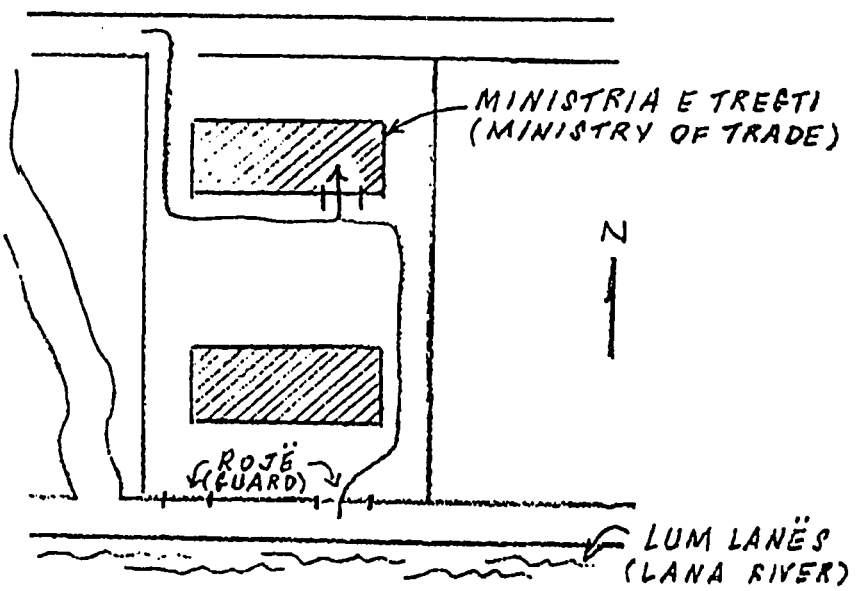
Sponsorizuar nga :

SHOQATA E JURISTEVE AMERIKANE
NISMA LIGJORE PËR EUROPËN
QENDRORE DHE LINDORE

DEPARTAMENTI I TREGTISË I SHBA
PROGRAMI I ZHVILLIMIT TË SË
DREJTËS TREGTARE

HARTË
(MAP)

NË SHESHI SKENDERBEJ
(TO SKANDERBEG SQUARE)



The Central and East European Law Initiative (CEELI)
of
The American Bar Association
and
The Commercial Law Development Program (CLDP)
of
The United States Department of Commerce

recognize the participation of

in the CEELI/CLDP Training Seminar and Workshop on
How to Negotiate, Structure, and Document International Joint Ventures

Tirana, Albania

July 13 - 16, 1993

"HOW TO NEGOTIATE, STRUCTURE AND DOCUMENT INTERNATIONAL JOINT VENTURES"

A TRAINING SEMINAR AND WORKSHOP
SPONSORED BY
ABA/CEELI and CLDP

TIRANA, ALBANIA
13-16 JULY, 1993

PARTICIPANT EVALUATION FORM

This evaluation will help CEELI and CLDP assess the substance and administration of the workshop, and to effectively respond to Albania's needs for technical legal assistance. Please answer the following questions, in English or Albanian. Comments on any other matters are welcome, and can be written on the back side of this form. Thank you for your participation and cooperation.

SUBSTANCE OF THE WORKSHOP

1. Was the subject of the workshop (international joint ventures) useful? What was the most useful? What was not helpful?

2. Were the subjects covered in the workshop sessions too difficult? Or were the subjects in the workshop too easy?

3. Was the organization of the workshop sessions good?

4. What did you like most about the organization? What did you like least?

5. Do you have any ideas about how to improve the organization?

6. Were the written materials helpful? Were the translations into Albanian (circle one) fair; good; or excellent?

7. How would you rate the workshop interpreters (circle one): fair; good; or excellent?

8. What kinds of additional legal assistance projects by CEELI and/or CLDP (such as meetings with CEELI's or CLDP's Albanian representatives, training workshops, or more written materials) do you recommend?

ADMINISTRATION OF THE WORKSHOP

1. Was Summer a good time of year to hold the workshop? If not, when would be a better time for a workshop (Fall, Winter, or Spring)?

2. Was the schedule for the workshop (from 0930 to 1430) convenient?

3. Was the location of the workshop convenient?

4. How did you learn about the workshop? Do you have any ideas about how to invite people to other workshops?

SI TE BASHKEBISEDOJME, SHKAMBIMOJME DHE DOKUMENTOJME NDERMARRJET E PERB
NDERKOMBETARE.

SEMINAR FREGATITOR I SPONSORIZUAR NGA AEA/CEELI DHE CLDP.

TIRANE SHTATOR 13-16Korrik 1993.

P ELBOR VLERESIMI PARA PJESEMARRJES.

Ky vleresi do te ndihmoje CEELI dhe CLDP q. te shikojne dhe rishikoj
temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiper
per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lut
tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim i
mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pj
e moralpa. te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo mshon ato sh
te lehta?

3.-Ishte organizimi i sesioneve te seminarit i mire?

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me
pak?

5.-Keni ndonje ide si te permiresohet organizimi?

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6.-A ju mundon materjalet e shkruara?Ismin perkthimet ne shqip te pranueshme,te mira apo shkelqyeshem?

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mir. apo te shkelqyer?

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektim CEELI ose CLDP(si t.Kime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mndoni se do te ishte kohe e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme

3.-Ishte vendi i organizimit i pershtatshem?

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4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si t'i ftohen njere
zit ne seminare t'i tjera?

Evaluation Forms

These evaluation forms will help CEELI and CLDP to review the issues that had been discussed in the seminar and the way the seminar was organized. So, we can understand better your needs for technical assistance or any other kind, and find the most efficient way to bring this assistance near you. You can answer to those questions in both English or Albanian. You are welcome to write your own opinions for anything that is not included in our questions. Thank you all for your participation.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?

3. What do you thing about the way the seminar was organized?

4. What was the think you like the best or the least in the way the seminar was organized?

5. Do you have any idea how can we do it better?

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?

7. What do you think about the interpreters?

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?

10. Do you think that 9:30 - 14:30 was proper?

11. What about the place?

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The topics were useful. For me the most important wa that about the documentation of an J.

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were between average and difficult

3. What do you thing about the way the seminar was organized?
-- The seminar was well organized

4. What was the think you like the best or the least in the way the seminar was organized?
-- Theory and practical experiences were well organized in the seminar.

5. Do you have any idea how can we do it better?
-- I don't have any idea

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
--Materials written in albanian were very good. Translations were excellent

7. What do you think about the interpreters?
-- Translators were very good especially the ladies

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
--

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Spring is better

10. Do you think that 9:30 - 14:30 was proper?
-- 8:30 - 13:30 is better

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- More participants from all ministries.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- It covered everyday problems that why is was very important to me

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were not difficult

3. What do you thing about the way the seminar was organized?
-- Very well organized

4. What was the think you like the best or the least in the way the seminar was organized?
-- The discussion between the two parts Albanians and Americans

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials helped and translation was good

7. What do you think about the interpreters?
-- O.K

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- More written materials

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Does not matter to me

10. Do you think that 9:30 - 14:30 was proper?
-- Good

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- more people should have been invited

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The topics of the seminar were very useful. Their interpretation was good and the most interesting part was contract discussion

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were average

3. What do you thing about the way the seminar was organized?
-- Very good

4. What was the think you like the best or the least in the way the seminar was organized?
-- The organization of the seminar was very good and all lawyers were well prepared.

5. Do you have any idea how can we do it better?
-- I don't have any idea.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- So, so

7. What do you think about the interpreters?
-- Very good

8. What kind of additional juridical assistance would you recommend to CAL or CLAP (more meetings with CAL or CLAP members, seminars, or more written materials.)?
--more seminars and written materials.

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Spring

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Good
12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- To invite more lawyers and economists from different enterprises.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes especially the financing part of the J

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Good

3. What do you thing about the way the seminar was organized?
-- Very good

4. What was the think you like the best or the least in the way the seminar was organized?
-- The combination of theory and practice

5. Do you have any idea how can we do it better?
-- More time for the participants to talk.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Yes. Translations were good

7. What do you think about the interpreters?
-- Good.

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- seminars and meetings with Cal and CLDP people

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall or spring

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- We learn about the organization of the discussions and how to prepare the documentation for J. People from enterprises, lawyers must be invited.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Seminar was useful

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- The topics were easy to understand

3. What do you thing about the way the seminar was organized?
-- Organization of the seminar was excellent

4. What was the think you like the best or the least in the way the seminar was organized?
-- Interaction of the auditor and the referents

5. Do you have any idea how can we do it better?
-- More example from Albania

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
--Yes, translation was good

7. What do you think about the interpreters?
-- Very good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- The seminar was useful, but since the needs for written materials are very big we need more of them

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall or winter

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- we needed more experts of special fields

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes. Session number I and II were the best, I knew everything in session number III, Session IV was very important for us and it needs to be discussed more, also sessions number V and VI

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were easy except session number IV

3. What do you thing about the way the seminar was organized?
-- Good

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked the competence of the lawyers and the fact that the seminar was based in our legislation

5. Do you have any idea how can we do it better?
-- Discussions about the J that are already built in Albania should have been broader

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- I was not at all satisfied from the translation of the materials

7. What do you think about the interpreters?
-- They were very good orale but not enough in their written translation

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- Financial assistance

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Yes

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
- I liked the seminar, I think it was useful. I liked the best, the part about the documentation for the J

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were very good

3. What do you thing about the way the seminar was organized?
-- The organization of the sessions was perfect

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked the coordination of the lectures and the practical part for all different problems
5. Do you have any idea how can we do it better?
-- I would think that 4 days were not enough for the seminar, 6 days would have been better

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials were very helpful, and translation were good

7. What do you think about the interpreters?
-- They were excellent

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Spring or Fall would be better

10. Do you think that 9:30 - 14:30 was proper?
-- 8:30 - 14:30 is the best time for my opinion

11. What about the place?
-- Place was good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- We learn a lot about JV which is kind of new for us. I would think that bigger participation is necessary

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
--yes very useful

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were pretty much understandable

3. What do you thing about the way the seminar was organized?
-- Very good

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked the way the practice and the theory were coordinate to build a contract

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials were very good, translations were good

7. What do you think about the interpreters?
-- Good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Proper

10. Do you think that 9:30 - 14:30 was proper?
--Yes

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- A material stimuli would increase the participation

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The topic of the seminar was useful and interesting. The studying of a concrete problem was interesting

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were very good

3. What do you thing about the way the seminar was organized?
-- The organization was very good

4. What was the think you like the best or the least in the way the seminar was organized?
-- It was organize in the most proper time for us

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials were very good, translations were O.K

7. What do you think about the interpreters?
-- The interpreters were good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
--

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall

10. Do you think that 9:30 - 14:30 was proper?
-- Yes, it was the most proper time

11. What about the place?
--Place was perfect

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- We learn new things and we made clear some things we knew before. A better announcement would have increased the number of participants

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The workshop very helpful. Business negotiation was more interesting.

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Financing was the most difficult

3. What do you thing about the way the seminar was organized?
-- It was good

4. What was the think you like the best or the least in the way the seminar was organized?
-- More people should have been invited and more publicity should have been made

5. Do you have any idea how can we do it better?
-- To invite more concerned people or institutions.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
--Translation was good

7. What do you think about the interpreters?
-- Some of them were very good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- More workshop supported by written materials

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?

-- The time of workshop organization was very good

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- We were introduce to JV atmosphere. More people can be invited by doing more promotion.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Practical section was the most useful part of this useful seminar

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Average level

3. What do you thing about the way the seminar was organized?
-- the organization was perfect

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked it all

5. Do you have any idea how can we do it better?
-- Some kind of material stimuli

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials were good help, translations were good except some economic terms.

7. What do you think about the interpreters?
-- Very good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- More seminars and more meetings

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Yes

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- I learned a lot about JV Companies, contracts and all other things.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Negotiation of the contract of J was the most interesting part for me

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Good level

3. What do you thing about the way the seminar was organized?
-- It was good

4. What was the think you like the best or the least in the way the seminar was organized?
-- Discussion

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials helped us a lot and translations were very good

7. What do you think about the interpreters?
-- Excellent

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Spring

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
--

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes. Signing the contract

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were understandable

3. What do you thing about the way the seminar was organized?
-- yes

4. What was the think you like the best or the least in the way the seminar was organized?
-- Materials in the written form.

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials helped us and translation was great

7. What do you think about the interpreters?
-- Excellent

8. What kind of additional juridical assistance would you recommend to CEELI and CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
--

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Spring

10. Do you think that 9:30 - 14:30 was proper?
-- yes, but another break is helpful

11. What about the place?
-- Yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
--

-- More participation

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The topic was really useful especially the practical part

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were in a good level for us

3. What do you thing about the way the seminar was organized?
-- Organization was great

4. What was the think you like the best or the least in the way the seminar was organized?
-- I would like to know more about the leading of the J. I liked the section about the negotiations of J

5. Do you have any idea how can we do it better?
-- More details

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials were very helpful to us. I liked the translations

7. What do you think about the interpreters?
-- They did a good job

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- We would like that CAL will organize more seminars about the commercial law

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Very good

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Yes

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
--

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes. About The international J

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were not hard to understand

3. What do you thing about the way the seminar was organized?
-- The organization of the seminar was in a very high level

4. What was the think you like the best or the least in the way the seminar was organized?
--

5. Do you have any idea how can we do it better?
--

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials were very good and were translated very good for us

7. What do you think about the interpreters?
--High level of interpreters

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Winter

10. Do you think that 9:30 - 14:30 was proper?
-- The best

11. What about the place?
-- Very comfortable

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- from this seminar we learn how to play in the field

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
--The topics were very worthy for me. I was more interesting in the part about the negotiation for the J

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Topics were neither difficult nor easy

3. What do you thing about the way the seminar was organized?
-- It was very well organized

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked the work in groups and discussions about J

5. Do you have any idea how can we do it better?
-- Materials were great translations could have been better

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Materials were great translations could have been better

7. What do you think about the interpreters?
-- Good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- More meeting

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- That good

10. Do you think that 9:30 - 14:30 was proper?
-- Two breaks and this schedule

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- We learn about the necessary documentation and the financial structure of J

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes. About the contract

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- they were fine

3. What do you thing about the way the seminar was organized?
-- Yes, very good

4. What was the think you like the best or the least in the way the seminar was organized?
-- The whole discussion

5. Do you have any idea how can we do it better?
-- Some documentation from a Joint Venture that is already built in Albania

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Yes

7. What do you think about the interpreters?
-- Good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
-- More seminars

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Good

10. Do you think that 9:30 - 14:30 was proper?
-- Good

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- I liked the seminar and I think that there was enough to get from it.

Muharem Daliu

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
--For my opinion every topic was really useful.

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
--They were fine to understand and very interesting

3. What do you thing about the way the seminar was organized?
--The organization of the seminar was very good.

4. What was the think you like the best or the least in the way the seminar was organized?
-- The theoretical part of the seminar in the very beginning and the practical conclusion in the end were the part I really liked the best.

5. Do you have any idea how we can do it better?
--These seminars should be organize more often.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
--Written materials were a good help for us and I thing that the translation was pretty good.

7. What do you think about the interpreters?
-- They were excellent

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
--The combination of all three of the suggestions above would be my recommendation.

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
--Summer was the best time

10. Do you think that 9:30 - 14:30 was proper?
-- Time was proper

11. What about the place?
-- Place was proper

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
--We learn many useful things that will help us in our everyday work.

Luiza Konomi

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- The theme of the seminar was really interesting. The part of concretization at the end was the best.

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- Average

3. What do you thing about the way the seminar was organized?
--Relatively good

4. What was the think you like the best or the least in the way the seminar was organized?
-- The examples and the experience at the end were very useful

5. Do you have any idea how can we do it better?
-- a) More participants, b) more often, c) the materials must be delivered earlier.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Translations and materials were very good.

7. What do you think about the interpreters?
-- Good

8. What kind of additional juridical assistance would you recommend to CAL or CLAP (more meetings with CAL or CLAP members, seminars, or more written materials.)?
-- Meetings with CAL and CLAP representatives and more seminars will be a good help.

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall or winter is better

10. Do you think that 9:30 - 14:30 was proper?
-- Yes

11. What about the place?
-- Good

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- I think we learn a lot.

Idriz Bylyku

1. The seminar was useful. The part about the contracts for J.V.C was the most interesting one.

2. They were easy

3. Well organized

4. Lawyers were very well prepared

5. Written materials should have been handed to us earlier

6. Materials were helpful, translation were good

7. Good

8. More seminars and written materials

9. Proper

10. Proper

11. Proper

12. Thanks to the seminar I have now a clear idea about J.V.C

Anila Bashllari

1. For my opinion every thing was interesting.
2. They were easy
3. Well organized
4. Discussion
5. Two breaks would help more
6. Materials in english were more helpful to me.
7. Some good, Some O.K
8. More meetings
9. Spring
10. Time was fine
11. Place was fine
12. The seminar was very interesting

Roland Marmullahi

1. It was very useful, especially how to build a Joint Venture Company

2. Interesting

3. Good

4. The way they explained things

5. More place needed

6. Materials helped. Translations were good

7. Good

8. A seminar about Legislature of the enterprises

9. Fall

10. Good

11. It was good.

12. How to build a Joint Venture. What makes it difficult for our country?

Enver Qafolli

1. The topics were good especially those practical

2. They were not hard

3. Well organized

4. We liked the lawyers preparation but they were few in number.

5. The professional help would be useful.

6. Materials were good, translations were O.K

7. They were good and excellent.

8. I don't have any opinion

9. Winter

10. It is not proper in winter

11. Good place

12. More participation: more lawyers

Aleksander Meci- lawyer

1. The topics of the seminar were useful especially those practical, in other words the discussions how to sign a contract.

2. Those topics were average, neither hard or easy.

3. The seminar was well organized.

4. I like the people who were in charge to organize the seminar and those who took speeches.

5. It would have been better if those written materials would had been delivered earlier. And it would be better if the seminar would be organized in U.S.A..

6. Written materials helped us a lot. A part of them were translated in high level and some of that was just O.K

7. Some of the interpreters were good and some of they were excellent.

8. Meetings and written materials can be very useful.

9. Spring would be much better.

10. Time was proper

11. Place was proper

12. It would have been more useful if more lawyers would have participate.

Suggestion: It is necessary to prepare a written materials to explain the terminology.

Pirro Progri

1. The topic was really good especially sections number I and II.

2. They were not difficult.

3. Seminar was organized very good.

4. Their competence

5. We should spend more time to discuss about the problems raised during the activities of Joint Venture Companies.

6. Written materials were helpful. Translations were O.K.

7. Oral translation was good but the written one could have been better

8. Juridical assistance

9. Summer was good

10. So was the time

11. And the place

12. A bigger participation would have been great

Genc Lubonja- lawyer

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
--All the issues of the seminar were very interesting and useful.

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- They were understandable.

3. What do you thing about the way the seminar was organized?
--It cold have been better.

4. What was the think you like the best or the least in the way the seminar was organized?
--I liked the lectures, but I did not like the participation

5. Do you have any idea how can we do it better?
-- If the announcement the agenda would have been delivered in the same time ,I think that the participation in the seminar would have been much better.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials were a good help and translation was good

7. What do you think about the interpreters?
-- Good

8. What kind of additional juridical assistance would you recommend to CEELI or CLDP (more meetings with CEELI or CLDP members, seminars, or more written materials.)?
--institutional Organization

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall is better

10. Do you think that 9:30 - 14:30 was proper?
-- Two breaks were necessary

11. What about the place?
-- Somewhere near the center of the city is better.

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- I learned more how to communicate with the audience, how to develop a discussion, and especially about the issue of signing a contract.

Questions about the agenda of the seminar

1. Was the topic of the seminar useful? Which was the most useful part?
-- Yes. Most useful : created awareness on various problems that can arise in JV agreements

2. What do you thing about the topics of the seminar? Were they hard or easy to understand?
-- The subject covered was well chosen and suitable for the majority of the participants.

3. What do you thing about the way the seminar was organized?
--Not organized well enough. A lot of people from relevant ministries, agencies were not invited, The program of the workshop was not distributed in advance, No representatives of foreign investors were present

4. What was the think you like the best or the least in the way the seminar was organized?
-- I liked the friendliness of the organizers and least the fact that they did not focus enough on Real life Albanian JV experiences

5. Do you have any idea how can we do it better?
--Should involve more international organizations.

6. Do you think that those written materials helped you a lot? Was the translation fair, good, or excellent?
-- Written materials were very good , translators were good.

7. What do you think about the interpreters?
-- They were too many of them and in general they were good or fair.

8. What kind of additional juridical assistance would you recommend to CAL or CLAP? -- No comment

The organization of the seminar

9. Do you think that summer was the proper time for the seminar? If it is not so, what is your opinion?
-- Fall or spring

10. Do you think that 9:30 - 14:30 was proper?
-- 8:00 - 12:00 (or 13:00) could be better

11. What about the place?
-- It could have been better, probably somewhere else and not in the ministries.

12. What did you learn from this seminar and how do you think we can get mort people in this kind of activities?
-- More participants.

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SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR TRAJNIMI I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

[illegible] TIRANE 15-16Korrik 1993.

[illegible] VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur qe ti pergjigjeni pyetjeve te meposhtme ne Anglisht ose Shqip. Mirepresim komente dhe probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju falenderojme per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me e vlefshme?

Tema e seminarit ishte e vlefshme. Pjesa më e vlefshme e seminarit ishte ajo e konceptimit për hartimin e kontratës së ndërmarrjes së përbashkët.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo ishin ato shume te lehta?

Temat e trajtuara në seminar ishin të një niveli të mirë, dhe të trajtuara me një nivel të lartë dhe të kuptueshëm nga auditori.

3.-Ishte organizimi i seksioneve te seminarit i mire?

Organizimi i seksioneve të seminarit ishte shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Në lidhje me organizimin më pëlqeu seanca [illegible]. Por do të kërkonim më tepër për procesin e drejtimit të J.V.

5.-Ne cfare menyre mund te permiresohet organizimi?

Të ketë më tepër detyra për çështjet në seminare të tjera?

6.-A ju ndihmuan materjalet e shkruara? Ishin perkthimet ne shqip te pranueshme, te mira apo shume te dobeta?

Materialet e shkruara ~~ishin~~ ishin adekuate. Në përgjithësi përkthimet në shqip ishin të mira por mund të të përsosej më tej me termat profesionale.

7.-Si do ta vleresonit interpretet (perkthyesit) e seminarit te pranueshem mire apo te dobet?

Një punë të ~~[illegible]~~ lavdërueshme (që edhe shumë) që sintetizonin e kthej në kohë. ishte edhe puna e interpretëve.

8.-Cfare lloj asistence juridike ndihmese do te rekomandonit për projektin CEELI ose CLDP (si te mund te perfitojne shqiptaret te CEELI apo CLDP, seminare pergatitore apo me teper materjale te shkruara)?

Do të kërkonim që nga ana e CEELI në organizimin e seminareve të ketë një pjesmarrje më e madhe, si dhe të trajt. edhe çështje të politikës trafikut. (kontrolli trafiku, etj.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vitit sezoni i pershtatshem per organizimin e seminarit? N.q.s. nuk ishte, kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte, dimer apo pranvere)?

Koha e vitit ishte e përshtatshme.

2.-Ishte koha per seminarin (ora 8^{30}-14^{30}) e pershtatshme

Po.

3.-Ishte vendi i organizimit i pershtatshem?

Po.

4.-Cfare mesuat prej seminarit?A keni ndonje mendim se si te ftohen njere
zit ne seminare te tjera?

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASH[KETA] NDERKOMBETARE.

SEMINAR PERGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16 Korrik 1993.

FLETE VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmonte CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur qe ti pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente mbi probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me e vlefshme?

Tema e seminarit ishte e dobishme. Pjesa me e vlefshme ishte tema e [illegible] te [illegible] dhe [illegible] te ndermarrjes se [illegible]

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo ishin ato shume te lehta?

Temat e seminarit ishin te [illegible] shume mire me gjithe [illegible] e te [illegible]

3.-Ishte organizimi i seksioneve te seminarit i mire?

Organizimi i seksioneve te seminarit [illegible] mjaft i mire

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Pelqeva [illegible] organizimi [illegible] e mire i temave [illegible] ne grupe [illegible]

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5.-Keni ndonje ide si te permiresohet organizimi?

[illegible]

[illegible] seminarit [illegible]

6.-A ju siguruam materjale te shkruara? Ishin perkthimet ne shqip te pranueshme, te mira apo shume te dobeta?

[illegible]

7.-Si do ti vleresonit interpretet (perkthyesit) e seminarit te pranueshem, te mire apo shume te dobet?

Perkthyesit e seminarit [illegible]

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI apo CLDP (si p.sh. materjale te perkthyera shqip nga CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vitit per sezoni e pershtatshem per organizimin e seminarit? N.q.s. nuk ishte, kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte, dimer apo pranvere)?

[illegible] e pershtatshme [illegible] organizimin e seminarit [illegible]

2.-Ishte koha per seminarin (ora 9^{30}-14^{30}) e pershtatshme

[illegible]

3.-Ishte vendi i organizimit te i pershtatshem?

[illegible] i pershtatshem.

4.-Cfare mesuat nga seminarit?A keni ndonje mendim se si te ftohen njerezit ne seminare te tjera?

[illegible]

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... SASMEDOURE, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKET NDERKOMBETARE.

SEMINAR ... I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

... 13-16 Korrik 1993.

... PJESEMARRESVE.

... vleresim ... CEELI dhe CLDP ... te shikojne dhe rishikojne ... organizimin e seminarit dhe ... nevojave te Shqiperise per asistence ... dhe juridike ... efektive. Jeni te lutur ... pergjigjeni pyetjeve ... ne Anglisht ose Shqip. Mirepresim ko... ... per diskutim ... te shkruhen ne pjese ... Ju faleminderit per pjesemarrjen dhe bashkepunimin.

... SEMINARIT

1.-Ishte ... e seminarit ... ? Cila pjese ishte me e vlefshme?

[illegible]

2.-Ishin temat ... ne seminar shume te vështira? Apo ishnon ato shume te lehta?

[illegible]

3.-Ishte organizimi i sesioneve te seminarit i mire?

[illegible]

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

[illegible]

5.-Keni ndonje ide si te permiresohet organizimi?

[illegible]

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6.-A ju [illegible] materjalet e shkruara? Ishin perkthimet ne shqip te pranueshme, te mira apo duhej [illegible]?

[illegible]

7.-Si [illegible] vleresonit interpretet(perkthyesit) e seminarit te pranueshem, mir. apo te [illegible]?

Interpretet [illegible] per [illegible] seminar [illegible]

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si [illegible] perkthyeses shqip [illegible] te CEELI apo CLDP seminare [illegible] apo me teper materjale te shkruara)?

[illegible] per [illegible]

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha [illegible] sezoni i pershtatshem per organizimin e seminarit? N.q.s. nuk ishte, kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte, dimer apo pranvere)?

2.-Ishte koha per seminarin (ora 8^{30}-14^{30}) e pershtatshme

3.-Ishte vendi i organizimit i pershtatshem?

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4.-Cfare mesuni [illegible] shkrimit?A keni ndonje mendim se ci t[illegible] ftohen njore cil[illegible] ne [illegible] [illegible]?

[illegible]

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... DOKUMENTOJME NDERMARRJET E PER... NDERKOMB...

... I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

... 13-16Korrik 1993.

...

Ky vleresim ... te ndihmoje CEELI dhe CLDP ... te shikojne dhe rishiko... temat dhe organizimin e seminarit ... per t'iu pergjigjur nevojave te Shqipe... per ... me efektive. Jeni te lu... ju pergjigjeni pyetjeve ... Anglisht ose Shqip. Mirepresim ... dhe probleme te tjera per diskutim te cilat mund te shkruhen ne ... Ju falenderojme per pjesemarrjen dhe bashkepunimi...

... SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me e vlefshme?

[illegible]

2.-Ishin temat ... seminar ... ? Apo ishin ato ... te lehta?

Ne pergjithesi temat e seminarit ... te kuptue...

3.-Ishte organizimi i sesioneve te seminarit i mire?

Organizimi i seminarit ...

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu m... pak?

—

5.-Keni ndonje ide si te permiresohet organizimi?

—

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6.-A ju [illegible] materjalet e shkruara? [illegible] perkthimet ne shqip te pranueshme, te mira apo shume [illegible]?

Materialet të përkthyera në shqip ishin të përkthyera mirë

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem, te mire apo te [illegible]?

Përkthyesi i seminarit ishte i nivelit të lartë

8.-Çfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si p.sh. me perfaqesues shqiptare te CEELI apo CLDP, seminare praktike apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vitit sezoni i pershtatshem per organizimin e seminarit? N.q.s. nuk ishte, kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte, dimer apo pranvere)?

Dimër

2.-Ishte koha per seminarin(nga $9^{30}-14^{30}$) e pershtatshme

ishte e përshtatshme

3.-Ishte vendi i organizimit i pershtatshem?

i përshtatshëm

4.-Cfare mesuat n[illegible] seminarit?A keni ndonje mendim se si t[illegible] ftohen nj[illegible]

[illegible] sjerr?

[illegible] problemet
e [illegible]

SI TE BASHKEBISEDOJME, SFRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK
NDERKOMBETARE.

SEMINAR FREGATIOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresi do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes.Ju falemnderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE - SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
Tema e seminarit ishte dobishme dhe interesante
Pjesa me e vlefshme ishte studimi i nje rasti konkret

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo ishon ato shume te lehta? Temat e trajtuara ne seminar ishin të kuptueshme

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi ishte i mire, akoo

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Ne lidhje me organizimin me pelqeu me shume,
Lavdërimi i tij - ne kohe te pershtatshme per me.

5.-Keni ndonje ide si te permiresohet organizimi?

6.-A ju mjaftuan materjalet e shkruara?Isnin perkthimet ne shqip te pranu me,te mira apo shkelqyeshem?

Materialet e shkruara ka udhezime sipas.
Perkthimet ne shqip asnje te pranueshme.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem mira apo te shkelqyer?

Interpretet ~~ke~~ jo kim te mire

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si p.sh.me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semina (Vjeshte,dimer apo pranvere)?

Koha me i pershtatshme do te mund qenite

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme

Po

3.-Ishte vendi i organizimit i pershtatshem?

Sigurisht.

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njerezit ne seminare te tjera?

Mesuam gjera te reja dhe rifreskuam njohurite e fituara me pare nga praktika ose leximi.

Njerezit duhet te ftohen te marrin pjese ne seminar nepermjet nje njoftimi me te mire.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERI
NDERKOMBETARE.

SEMINAR RAJONATOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishiko
temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqipe
per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lu
tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim
mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne
e mungon te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimi

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?

Po shumë e dobishme. Pjesa lidhur me objektivat
dhe respektimi te
konkretë.

2.-Ishin temat e trajtuara ne seminar sipas te vleshtirave?Apo mshon ato s
te lehta?

Mendoj se ishin te kapshme nga unë.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu m
pak?

Menyra e kombinimit te teorisë me menyrën
praktike te shortuar te kazistikës më pelqeu shu

5.-Keni ndonje ide si te permiresohet organizimi?

Nuk kam ndonjë ide.

6.-A ju mjaftojne materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem?

Materiali ishte mjaftueshem, perkthimet ishin te pranueshme.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer? Te mire.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektimin CEELI ose CLDP(si t.ashtu me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

Nuk kam ndonje rekomandim.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? Nq.s. nuk ishte,kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?

Ishte i pershtatshme.

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtateshme Po

3.-Ishte vendi i organizimit i pershtatshem? Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se ci ta ftohen nje
zit ne seminare te tjera? Për të ftuar se më shumë
do të ishte dëshirë të jepej një fond shtesë
material.

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKET NDERKOMBETARE.

SEMINAR FREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhtme ne Anglisht ose Shqip.Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapa te fletes.Ju falemenderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?
Tema ishte shumë e vlefshme per mua, me e rendesishmja ishte pjesa e negociatave për të arritur ne marrëveshjen për JV.

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo mshon ato shume te lehta? Temat nuk ishin as aq të lehta dhe jo ap të veshtira.

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi i sesioneve ishte shumë i mire

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Puna në grupe dhe diskutimi i pikave me kryesore e dëshirës lidhur me JV.

5.-Keni ndonje ide si te permiresohet organizimi?

6.-A ju nuihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranue
me,te mira apo shkelqyeshem? Materialet qkú dunë të nevojiten
perkthimet mund të ishin me të mira.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,
mire apo te shkelqyer? Të mirë.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektin
CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP,
seminare pregatitore apo me teper materjale te shkruara)? Takime me
perfaqesues shqiptore të CEELI dhe CLDP, seminare,

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit?
M;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar
(Vjeshte,dimer apo pranvere)? Sezoni i veres e i pranverës është më
i përshtatshem.

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme
Koha është e përshtatshme por me 2 interval pushimi.

3.-Ishte vendi i organizimit i pershtatshem?
- Po.

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere
zit ne seminare te tjera?

Lidhur me statutet e fiedimeve, dokumentacionin
e nevojshem dhe strukturen financiare te JV.

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK
NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

Aleksandër Meçi. -- Avokat.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjes e mbrapme te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
Temat e seminarit ishin të dobishme. Më të dobishmet ishin temat praktike, d.m.th. diskutimi për lidhjen e kontratës.

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo ishin ato shume te lehta? Temat e trajtuara ishin të një vështirësie mesatare.

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi i sesioneve ishte shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Më shumë më pëlqeu te organizatorët dhe referuesit ishin shumë të përgatitur

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5.-Keni ndonje ide si te permiresohet organizimi?
Më mirë do të ishte që materialet e përgatitura të ishin shpërndarë më parë pjesëmarrësve.

dhe që ky seminar të ishte zhvilluar në Sh.B.A.

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranueshme,te mira apo shkelqyeshem? Materialet na ndihmuan. Një pjesë ishin përkthyer mirë e një pjesë shkëlqyeshëm.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer?. Përkthyesit ishin të mirë e disa të shkëlqyer.

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?
Më mirë të kemë takime shpeshtë me materiale të shkruara.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?
Më mirë në Pranverë.

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtatshme
Ishte

3.-Ishte vendi i organizimit i pershtatshem?
Ishte

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4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njerezit ne seminare te tjera?

Mesova shume nga shume juriste.

Sugjerimi: Te pergatitet nje material ku te shpjegohet terminologjia juridike e ekonomike.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK[illegible] NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?
Po. Me te vlefshme ishin seksioni I dhe II.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo ishin ato shume te lehta? Temat e seminarit u trajtuan shume mire.

3.-Ishte organizimi i sesioneve te seminarit i mire? Po.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak? kompetenca profesionale e te gjithe lektoreve

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5.-Keni ndonje ide si te permiresohet organizimi?
Me shume kohe te seminarit diskutimeve konkrete nder mjet lektoreve e pjesemarresve per problemet qe krijohen ne [illegible] tin e ndermarrjeve te perbashketa

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pra
me,te mira apo shkelqyeshem?
Materialet e shkruara no ndihmuan. Perkthimet mund te
ishin me te mira

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshe
mire apo te shkelqyer?
Perkthyesit ne interpretim me gjithi shumic te mire
por ne perkthimin e materialeve mund te ishin me te sak

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projekti
CEELI ose CLDP(si t mime ne perfaqesues shqiptare te CEELI apo CLDP
seminare prejardore apo me teper materjale te shkruara)?
Asistence juridike

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i persntatshem per organizimin e seminarit
(p.q.s. nuk ishte,kur mendoni se do te ishte kohe e persntatshme per semin
(Vjeshte,dimer apo pranvere)?
Koha e organizimit te seminarit kishte e pershtatshme

2.-Ishte koha per seminarin("ga 9^30-14^30) e persntateshme Po

3.-Ishte vendi i organizimit i persntatshem? Po

4.-Çfarë mësuat rreth seminarit?A keni ndonjë mendim se ci të ftohen njerezit në seminare të tjera?

Ne [illegible] te [illegible] [illegible] [illegible] [illegible] medio [illegible]

Piro Pro[illegible] [illegible]

[illegible]rane me 16. 7. 1993

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16 Korrik 1993.

PYETJESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhtme ne Anglisht ose Shqip. Mirepresim koment ose probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju falemenderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me vlefshme?

Natyrisht qe po. Aplikimi në praktikë. si dhe konkretizimi i leksioneve të shkuara.

2.-Ishin temat e trajtuara ne seminar shume te vshtira? Apo mshon ato shume te lehta?

Jo. per sa i jo.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Jemi të kënaqur.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Niveli dhe kultura juridike. Mungesa e juristeve që ne kete zone ishin vetëm 3.

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5.-Keni ndonje ide si te permiresohet organizimi?

Njohja me praktikën e të drejtës ndërkombëtare në këtë fushë si dhe ndarja në specialitete.

6.-A ju ndihmuan materjalet e shkruara? Ishin perkthimet ne shqip te pranueshme, te mira apo shkelqyeshem?

Per materialet e rekomanduara jam i kenaqur. Perkthimet te mira.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem, t mire apo te shkelqyer?

Te mire ne mjaft raste
dhe te shkelqyer megjithse Terminollogjia
e komunikimi ka kontekst juridik

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

Nuk kam dijeni mbi keto programe

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte, kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte, dimer apo pranvere)?

— Per cdo pune me pelqen ne shume pergjigjen intelektuale te planifikoj stinet e ftohta

2.-Ishte koha per seminarin(ora 9^{30}-14^{30}) e pershtatshme.

Per keto shume jo.

3.-Ishte vendi i organizimit i pershtatshem?

i mire

4. Cfare mesuat rreth seminarit?A keni ndonje mendim se ci te ftohen njere-
zit ne seminare te tjera?

- Me shumë drejtues ndërmarrjesh ekonomike
- Juristë, ekonomistë, si dhe specialistë
- të [illegible] në jetë

Enver Qafolla

Balliu Tiranë

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK NDERKOMBETARE.

SEMINAR INFORMATIF I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

FORMULAR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur qu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim komente ose probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes.Ju falemnderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me e vlefshme?
Jashtezakonisht e dobishme. [illegible]
[illegible]

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo ishin ato shume te lehta? Interesante

3.-Ishte organizimi i sesioneve te seminarit i mire?
[illegible]

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Menyra e mesimit dhe pyetjeve

360 5.-Keni ndonje ide si te permiresohet organizimi? Po. Mendoj se duhet te organizohet me i [illegible] te [illegible]

6.-A ju nuihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranu
me,te mira apo shkelqyeshem? Gjithesi. Perkthimet jane
relativisht te pranueshme.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem
mire apo te shkelqyer? te mire.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektin
CEELI ose CLDP(si t.ilime me perfaqesues shqiptare te CEELI apo CLDP,
seminare pregatitore apo me teper materjale te shkruara)?
pe te organizohet seminar per ligjin e
ndermarjeve.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semina
(Vjeshte,dimer apo pranvere)? Vjeshte.

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme . Po.

3.-Ishte vendi i organizimit i pershtatshem? Po, por edhe desh
pe te kete me shume te pranishme.

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4.-Cfare mesuat rreth seminarit? A keni ndonje mendim se si te ftohen njerezit ne seminare te tjera? Se si u mjelet ndermarrja e perbashket. Veshtiresit e te huajve ske pales shqiptare qe te fillojne biznesin e perbashket. Ftimi duhet te jete ne kohe me te gjera

[illegible]

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASH
NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te bdihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju falemenderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?

Iseta e dobishme dhe interesante.
Per mendimin tim të gjitha temat ishin të vlefshme.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo mshon ato shum te lehta?

Temat ishin të nji vështirsie të lehtë
për mendimin tim.

3.-Ishte organizimi i sesioneve te seminarit i mire?

PO, isste shume interesant

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Bashkëbiseduni

5.-Keni ndonje ide si te permiresohet organizimi?

Të këtë dy ndërprerje midis 5 orësh.

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem? Une punova me materialet në anglisht.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer? Disa mirë

Disa shumë mirë

8.-Cfare lloj asistence juridike shtese do te rekomandonit për projektimin CEELI ose CLDP(si trajnime me perfaqesues shqiptare te CEELI apo CLDP, seminare prezantuese apo me teper materjale te shkruara)?

Të organizohen më shumë takime.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? Nëq.s. nuk ishte,kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte,dimer apo pranvere)? Pranverë

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme

e përshtatshme.

3.-Ishte vendi i organizimit i pershtatshem?

Për rrethinën tonë, Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njerzit ne seminare te tjera?

Ishte interesante, mendoj duhet te organizohen dhe here te tjera.

Anila Bakllari

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKET NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

Lebrit Beqiraj

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresi do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?

Seminari ishte i dobishem. Pjesa më e vlefshme ishte përpunimi i kontratës së krijimit të J.V.C.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo shon ato shume te lehta? Temat e trajtuara ishin të lehta.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Organizimi ishte shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak? Më shumë më pëlqeu demostrimi praktik i temave të seminarit nga referuesit të cilët ishin njajft të përgatitur!

5.-Keni ndonje ide si te permiresohet organizimi?

Materialet me shkrim duhet të na ishin dhënë më parë, për të qenë më në gjëzë

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për të diskutuar gjatë seminarit.

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranue
me,te mira apo shkelqyeshem? Materialet na ndihmuan
dhe përkthimet në shqip ishin të pranueshë

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,
mire apo te shkelqyer?
Të mirë.

8.-Cfare lloj asistence juridike shtese do te rekomandonit për projektimin
CEELI ose CLDP(si t.ë.i.më me perfaqesues shqiptare te CEELI apo CLDP,
seminare pregatitore apo me teper materjale te shkruara)?
Më shumë seminare dhe materiale të
shkruara.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar
(Vjeshte,dimer apo pranvere)?
Të përshtatshëm

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtatshme
E përshtatshme

3.-Ishte vendi i organizimit i pershtatshem?
i përshtatshëm.

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere
zit ne seminare te tjera?

Në seminar mësuam disa gjëra me
rëndësi, sidomos në konceptimin e
J.-V. C. dhe plotësimin e dokumenta-
cionit të nevojshëm për J. V. C.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR PERGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

F[illegible] VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me e vlefshme?

Per mendimin tim tema e seminarit ishte shume e dobishme. Per mua te gjitha temat ishin mjaft te vlefshme dhe ishte e veshtire te dalloj.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo mendon ato shume te lehta?

Per mua ato ishin te kapshme dhe mjaft interesante.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Organizimi i sesioneve te seminarit dhe shpjegimi i tyre nga te gjithe lektoret shume i mire.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Organizimi i seminarit me pjesen teorike ne fillim dhe ne fund me konkluzionet praktike me pelqeu shume. [illegible] me pelqeu me shume.

369 5.-Keni ndonje ide si te permiresohet organizimi?

Me te shpeshta dhe me shume, keshtu nga keto seminare perfitohet shume.

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranueshme,te mira apo shkelqyeshem?

Po, ato ndihmuan shumë dhe për mendimin tim ia të përkthyera shumë mirë me ndonjë mangësi të vogël.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,te mire apo te shkelqyer?

Për mendimin tim shkëlqyeshëm.

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

Për mendimin tim Vazhdimësimi i të krejave dhe veçanërisht organizimi i seminareve të këtij lloji ka shumë efikasitet

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?

Për mendimin tim sezoni ishte i përshtatshëm

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtateshme

Shumë e përshtatshme

3.-Ishte vendi i organizimit i pershtatshem?

Për mua i përshtatshëm

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere
zit ne seminare te tjera?

Mërrum shumë gjëra të reja dhe të dobishme
për punëtë tuaja

Ju falemnderit

Me respekt

Muharrem Selmani

SI TE BASHKEBISEDOJME,SARUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKE
NDERKOMBETARE.

SEMINAR EDUKATIVE I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

Genc Lubonja Jurist Ministria Transportit e Komunikacionit

P.E.LSOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e murapra te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
Të gjitha temat ishin me vlera dhe të dobishme.
Veçoj temën për arbitrazhin

2.-Ishin temat e trajtuara ne seminar shume te vshtira?Apo ishon ato shume te lehta? Temat ishin të kuptueshme.

3.-Ishte organizimi i sesioneve te seminarit i mire?
Për mua organizimi linte për të dëshëruar.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Leksionet më pëlqyen, ndërsa pjesmarrja dhe salla ishin i sajl,jo.

5.-Keni ndonje ide si te permiresohet organizimi?
Njoftimi do bërë së bashku me programin që pjesmarrja të jetë e kualifikuar dhe të përfitohet maximumi.

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6.-A ju kishnuan materjalet e shkruara?Ishin perkthimet ne shqip te pranue
me,te mira apo shkelqyeshem? Nje shuma e një seminari është
dhe materiali i shkruar. Ka nje shumë shumë.
Perkthimi i mirë.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,
mire apo te shkelqyer?

Të mirë

8.-Cfare lloj asistence jupidike shtese do te rekomandonit për projektin
CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP,
seminare pregatitore apo me teper materjale te shkruara)?

Organizimin institucional

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar
(Vjeshte,dimer apo pranvere)?

Kohën nuk e mirë do të ishte në
Vjeshtë

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtatshme

E përshtatëshme duke e ndarë në 2 pushime 10'

3.-Ishte vendi i organizimit i pershtatshem?

Duhet të ishte dhe në një nga sallat në qendër të
qytetit

4.-Cfare mesuat prej ketij seminarit? A keni ndonje mendim se si te ftohen njerezit ne seminare te tjera?

Mësova shumë në këtë seminar, së pari mënyra e
komunikimit me auditorin, mënyra e zhvillimit të leksione.
Në aspektin e përfitimit nga temat mund të them se
përfitova në lojën që duhet në lidhjen e një kontrate
me levërdi si dhe në zgjidhjen e konflikteve.
Njerzit e tjerë thithen kundrejt interesit që
paraqesin temat e seminarit, prandaj që të gjithë
më sipër njoftimi i parakohshëm së bashku
me tematikat e leksioneve.

16.7.93

[signature]

SI TE BASHKERENDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBAS
NDERKOMBETARE.

SEMINAR PERGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperis per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim ko mente dhe probleme te tjera per diskutim te cilat mund te shkruhen ne pje e mbrapme te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?

Po, tema e seminarit ishte shume e dobishme. Pjesa në të cilën bëhej konkretizimi, vlerësoj më shum

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo ishon ato shum te lehta?

Mesatare

3.-Ishte organizimi i sesioneve te seminarit i mire?

Relativisht e mirë

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak?

Më pëlqeu më pak teoria, por theksoj përsëri se ana praktike e problemit ishte më shumë vlerë

5.-Keni ndonje ide si te permiresohet organizimi?

Të jenë më masive dhe më të shpejta

Materialet është mirë të përvetësohen
para fillimit të seminarit.

6.-A ju mjaftuan materjalet e shkruara?Isnin përkthimet në shqip të pranues
me,të mira apo shkelqyeshem? Nuk ynihë për materialet
na ndihmuan. Përkthimet janë të mira.

7.-Si do ti vlerësonit interpretet(përkthyesit) e seminarit te pranueshem,t
mira apo të shkelqyer?

Janë të mirë.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit për projektimin
CEFLI ose CLDP(si tjetër me përfaqesues shqiptarë te CEELI apo CLDP,
seminare përgatitore apo me teper materjale te shkruara)?

Unë me përfaqësues të CEELI apo CLDP të
kemi mua me seminare përgatitore

ORGANIZIMI I SEMINAREVE.

1.-A është koha e vere sezoni i përshtatshem per organizimin e seminarit?
Nëq.s. nuk është,kur mendoni se do të jetë koha e përshtatshme per seminar
(Vjeshtë,dimer apo pranvere)?

Të mira në vjeshtë apo dimër

2.-Është koha per seminarin("ga 9^30-14^30) e përshtatshme

po

3.-Është vendi i organizimit i përshtatshem?

po

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4.-Ciare mesuat rreth seminarit?A keni ndonje mendim ce si ti ftohen njo
zit ne seminare te tjera?

Besoj se jo shpresoj shume.

Luiza Kaumi

Luiza

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR INFORMATIVE I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI MBLEJ PJESEMARRESVE.

Ky vleresim do te bohmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur ju pergjigjeni pyetjeve te meposhtme ne Anglisht ose Shqip.Mirepresim, ko mendime apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?

Temat e seminarit ishin te dobishme. Interpretimi shume prenton. Teme me e vlefshme ishte Diskutimi i kontrates

2.-Ishin temat e trajtuara ne seminar shume te vshtira?Apo mshon ato shume te lehta?

Temat e trajtuar ishin te nivelit mesatar

3.-Ishte organizimi i sesioneve te seminarit i mire?

Shume i mire

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak?

Organizimi i seminarit ishte shume i mire. Ekspertet (referuesit) ishin shume te pregatitur ne fushen e tyre

5.-Keni ndonje ide si te permiresohet organizimi?

Nuk kam ndonje ide

6.-A ju mjaftuan materjalet e shkruara?Ishin perkthimet ne shqip te pran
me,te mira apo shkelqyeshem? Të pranueshme

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranuesh
mire apo te shkelqyer? Shumë mirë.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projekti
CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP
seminare pregatitore apo me teper materjale te shkruara)? Më shumë
seminare të hapësnura me mjete të Shkrua

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit
H;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semin
(Vjeshte,dimer apo pranvere)? Pranvera

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtateshme
Po

3.-Ishte vendi i organizimit i pershtatshem?
Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se ci te ftohen njere zi ne seminare te tjera? Të ftohen në seminare edhe nga ndërmarrjet si ekonomik e punës.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBA

NDERKOMBETARE.

SEMINAR REGJATITOR I SPONSORIZUAR NGA AEA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJSOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikoj temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperi per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutu ju pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim k mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pj e mbrapme te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte mee vlefshme?

YES _

MOST USEFUL :CREATED AWARENESS ON VARIOUS PROBLEMS THAT CAN ARISE
NOT HELPFUL: JV AGREEMENTS.

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo mshon ato sh te lehta?

THE SUBJECTS COVERED WERE WELL CHOSEN AND SUITABLE FOR THE MAJORITY OF THE PARTICIPANTS_

3.-Ishte organizimi i sesioneve te seminarit i mire?

NOT ORGANIZED WELL ENOUGH. (1) A LOT OF PEOPLE FROM RELEVANT MINISTRIES/AGENCIES WERE NOT INVITED (2) THE PROGRAMME OF THE WORKSHO WAS NOT DISTRIBUTED IN ADVANCE (3) NO REPRESENTATIVES OF FOREIGN INVESTORS WERE PRESENT

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak?

LIKED MOST: THE FRIENDLINESS OF THE ORGANIZERS

LIKED LEAST: THE ORGANIZERS SHOULD HAVE FOCUS MORE ON "REAL LIFE" ALBANIAN JV EXPERIENCES

5.-Keni ndonje ide si te permiresohet organizimi?

SHOULD INVOLVE MORE INTERNATIONAL ORGANIZATIONS IN ORDER TO INCREASE THE "INTERNATIONALITY" OF THE SEMINAR

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem?
THE WRITTEN MATERIALS WERE VERY HELPFUL — TRANSLATIONS WERE GOOD.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer?
INTERPRETERS: MOST GOOD BUT ONE FAIR — TOO MANY WERE PRESENT —

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektimin CEELI ose CLDP(si teknike me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?
A NEWSLETTER COULD BE CONSIDERED —

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?
FALL/SPRING WOULD BE MORE APPROPRIATE —

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme
NO — BETTER 08.00 - 12.00 (or 13.00) — PARTICIPANTS WOULD BE MORE CONCENTRATED —

3.-Ishte vendi i organizimit i pershtatshem?
NO — WOULD PREFER A "NEUTRAL" LOCATION (eg. PALACE OF CONGRESS OR THE UNIVERSITY) — WOULD AVOID JEALOUSIES BETWEEN MINISTRIES

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4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se ci te ftonen njere
zit ne seminare te tjera?

WAS INVITED BY GREG LOUSITMA.

ADVERTISE TO THE PEOPLE YOU WANT TO BRING
IN TIME —

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR FORMATIVE I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJE PER VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me vlefshme?
Tema e seminarit ishte shume e dobishme. Mendoj se secila e praktike ishte me e vlefshme.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo ishin ato shume te lehta? Temat e trajtuara në seminar ishin të mirëlidhur.

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi i sesioneve të seminarit ishte shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak? Më i pëlqyeshëm organizimi i seminarit me pëlqeu.

5.-Keni ndonje ide si te permiresohet organizimi?
Mendoj se duhet të bëhet edhe shtesë material

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranue
me,te mira apo shkelqyeshem? Materialet e shkruara na ndihmu
Perkthimet ne shqip ishin te mira. Por numri te pa
-lej me mire me termat te profesionale ekonomike

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,
mire apo te shkelqyer? Perkthyesit ishin te mire.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektimin
CEELI ose CLDP(si t'ndihme ne perfaqesues shqiptare te CEELI apo CLDP,
seminare preparatore apo me teper materjale te shkruara)? te dyja
Mendoj te zhvillohen me shume seminare sepse te
ndihmon edhe te lexo me shume literature me
perfaqesuesit te CEELI dhe CLDP.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
Nqs. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar
(Vjeshte,dimer apo pranvere)? Koha e vere mendoj se ishte
sezoni i pershtatshem pas zhvillimit e seminarit.

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme
Koha ishte e pershtatshme.

3.-Ishte vendi i organizimit i pershtatshem?
Vendi ishte i pershtatshem.

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere-zit ne seminare te tjera?

Ne seminar ne mësuam shumë gjëra rreth ndërmarrj-
-ve të përbashkëta. [illegible] Bisedimet për [illegible] e [illegible] të
përbashkëta [illegible] letrave të interesit, të [illegible]
[illegible] dhe [illegible] i tyre [illegible]. dhe
shumë probleme dhe [illegible] të fjalës [illegible]

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBAS
NDERKOMBETARE.

SEMINAR FREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

P. EJSOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresi do te bdihmoje CEELI dhe CLDP qe te shikojne dhe rishikojn
temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperi
per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutu
tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim k
mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pj
e mbrapa te fletes.Ju falemenderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
The meetings was very helpful.
Business negotiation was more interesting

2.-Ishin temat e diskutuara ne seminar shume te veshtira?Apo ishon ato shu
te lehta?
Financing was the most difficult

3.-Ishte organizimi i sesioneve te seminarit i mire?
It was good

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me
pak? More people should have been invited & more
publicity should have been made.

5.-Keni ndonje ide si te permiresonet organizimi?
To invite more concerned people/institutions

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6.-A ju mjaftuan materjalet e shkruara?Isnin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem?

The Albanian translations were good

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer?

Some of them (two) were good.

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektimin CEELI ose CLDP(ci trajnime me perfaqesues shqiptare te CEELI apo CLDP, seminare prezantuese apo me teper materjale te shkruara)?

More workshops supported by written materials

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?

The time of workshop organization was suitable.

2.-Ishte koha per seminarin("ga 9^30-14^30) e pershtatshme

Yes

3.-Ishte vendi i organizimit i pershtatshem?

Yes

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njer
zit ne seminare te ojera?

We were introduced to YV atmosphere (registration, financing, delicate points to be borne in mind el
Some people can be invited by duty more
frequently.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKE
NDERKOMBETARE.

SEMINAR AREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA - SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte me vlefshme?
Temat ishin shume të dobishme. Per mua më e dobishme tema mbi dokumentacionin bajera të ndermarjeve të perbashkëta

2.-Ishin temat e trajtuara ne seminar shume te vshtira? Apo shon ato shume te lehta?
Për me që jemi fillestar në këto fusha tema, cilat në përgjithësi të kapshme por kishte dhe të vështira si tema VI-të

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi i seminarit ishte shum i kënaqshëm

4.-Cfare ju pelgeu me shume ne lidhje me organizimin? Cfare ju pelgeu me pak?
Zhvillimi i seminarit karakterizohet nga koordinimi i teorise me pergyrat ore me dëshirë në praktikë

5.-Keni ndonje ide si te permiresohet organizimi?
Nuk kam ide të veçantë

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6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pra

me,te mira apo shkelqyeshem?

Materiali i shkruar shqip me ndihmoje shume sepse nuk e di gjuhen angleze. Me duket perkthim i shkelqyeshem.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshe

mire apo te shkelqyer?

Perkthyesit me duken te shkelqyeshem, ndonese [illegible] Zonjat ishin shume komunikuese

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projekti

CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP

seminare pregatitore apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminari

N;q.s. nuk ishte,kur mendoni se do te ishte kohe e pershtatshme per semi

(Vjeshte,dimer apo pranvere)?

Kohe me e pershtatshme me duket pranvera

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme

Mendoj se koha e pershtatshme eshte nga oret 8^{30}-13

3.-Ishte vendi i organizimit i pershtatshem?

Vendi eshte i pershtatshem

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4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere zit ne seminare te tjera?

Jam e mendimit te kete me shume pjesmarje po vetem nga diskutimet por edhe nga ndjet produktive. Ne kete seminar kishte shume pjesmarje nga ana e diskutimeve ehsan ne fokus. Duhet te kete nga te gjitha diskutimet

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKETA NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur qe tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjesen e mbrapme te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?

Po, Pjesa ku u diskutua konkretisht mbi realizimin e kontratës

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo ishon ato shume te lehta? Temat ishin të kuptueshme.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Po.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak? Materialet që u shpërndanë dhe gatishmëria për të shpjeguar asgjemos pologjë

5.-Keni ndonje ide si te permiresonet organizimi?

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6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem? Materialet na ndihmuan shumë. Në përgjithësi përkthimi qe i mirë.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer? Shkëlqyeshëm.

8.-Cfare lloj asistence juridike shtese do te rekomandonit per projektin CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e veres sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)? Në pranverë.

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme Po.
duhet të kishte ndërmjet tyre më tepër pushim

3.-Ishte vendi i organizimit i pershtatshem? Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njer
zit ne seminare te tjera?

SI P. BASHKEBISEDOJME,SHKEMBEJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK
NDERKOMBETARE.

SEMINAR FREGATITOR I SPONSORIZUAR NGA ADA/CEELI DHE CLDP.

TIRANE SHTATOR 13-16Korrik 1993.

PYETJOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP q. te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur ju pergjigjeni pyetjeve te deposhtene ne Anglisht ose Shqip.Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e mbrapme te fletes.Ju falemnderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?

Po, Seminari ishte i dobishem. Pjesa me e vlefshme ishte me fjalen; kontaktet ne ndermarrjes ne perbashkat.

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo ishon ato shume te lehta?

Temat ishin te nivelit te duhur.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Po ishte i mire.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak?

Menyra bashkebisedimit.

5.-Keni ndonje ide si te permiresohet organizimi?

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet në shqip të pranu
me,te mira apo shkelqyeshem?

materialet e përkthyera, nuk ndihmuan shumë, disa përkthime të
i shkelqyeshem.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem
mire apo te shkelqyer?

shkelqyeshem

8.-Cfare lloj asistence jupidike shtese do te rekomandonit për projektin
CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP,
seminare prezantuese apo me teper materjale te shkruara)?

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semina
(Vjeshte,dimer apo pranvere)?

Në pranverë

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtatshme

E pershtatshme

3.-Ishte vendi i organizimit i pershtatshem?

Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se ci te ftohen njere zi t ne seminare te tjera?

SI TE BASHKEBISEDOJME,STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERB
NDERKOMBETARE.

SEMINAR AREGATITOR I SPONSORIZUAR NGA AEA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJSOR VLERESIMI PREJ PJESEMARRESVE.

Ky vlereci. do te ndihmoje CEELI dhe CLDP q. te shikojne dhe rishikoj
temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiper
per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lut
tu pergjigjeni pyetjeve te mepothough ne Anglisht ose Shqip.Mirepresim
mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne p
e morapa. te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
Mendoj që ishte shumë e dobishme dhe tapë
praktike. Mbulonte problemet konkrete që
punojmë ose dhë

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo shon ato sh
te lehta? Në përgjithësi nuk ishin të vështira, më tep-
praktike

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizimi ishte shumë i mirë.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me
pak? Më shumë më pëlqeu mënyra praktike e
organizimit ku lektorët bashkëbisedonin me studentë

5.-Keni ndonje ide si te permiresohet organizimi?

Jo

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6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem? Materialet na ndihmuan shumë por perkthimi ishte [redacted]. korrekt.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer? Te pranueshëm

8.-Cfare lloj asistence jupidike shtese do te rekomandonit per projektimin CEELI ose CLDP(si takime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

më teper materiale të shkruara.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? N;q.s. nuk ishte,kur mendoni se do te ishte kohe e pershtatshme per seminar (Vjeshte,dimer apo pranvere)? Koha për vitin me Ka Freud

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme

Shumë e përshtatshme

3.-Ishte vendi i organizimit i pershtatshem?

Po

4.-Cfare mesuat rreth seminarit? A keni ndonje mendim se si ta ftonen njer

zit ne seminare te tjera?

Munguate bashkepunimin me palen shqiptare
per ftesat qe i solli mospjesmarrje te mjaftu

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHKI NDERKOMBETARE.

SEMINAR ARGETATOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim komente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e morapa te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKA E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?

Po. Diskutimi rreth kontrates.

2.-Ishin temat e trajtuara ne seminar shume te veshtira? Apo shon ato shume te lehta?

Ato ishin akoma si duhet

3.-Ishte organizimi i sesioneve te seminarit i mire?

Po. Ai ishte i mire

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Diskutimi i temave.

5.-Keni ndonje ide si te permiresohet organizimi?

Me pjesmarjen e dokumentave te nje vendmarje me perkthimet te tyre

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6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranu
me,te mira apo shkelqyeshem?

Po, Materiale ne shqip ishin te gramatikuara.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem
mire apo te shkelqyer?

Të mira

8.-Cfare lloj asistence juridike shtese do te rekomandonit për projektin
CEELI ose CLDP(si tryeza me perfaqesues shqiptare te CEELI apo CLDP,
seminare pregatitore apo me teper materjale te shkruara)?

Seminare për edhe materiale origjinale.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit?
Nq.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semina
(Vjeshte,dimer apo pranvere)?

Për mua s'ka rendësi stina.

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtateshme

Po

3.-Ishte vendi i organizimit i pershtatshem?

Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njere zit ne seminare te tjera?

Seminari ne pëlqeu.
Njerëzit mund të bëhen më ~~të~~ interesuar duke dhënë debatime per programin e Seminarit.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASH
NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA AEA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETESOR VLERESIMI PREJ PJESEMARRESVE.

Ky vleresi.. do te ndihmoje CEELI dhe CLDP q.. te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence t..knike dhe juridike ne menyre sa me efektive. Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip. Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjes e mbrapm.. te fletes. Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme? Cila pjese ishte mee vlefshme?

Mjaft e dobishme. Cdo pjese, veçanerisht financimi i ndermarjeve te privatizuara.

2.-Ishin temat e trajtuara ne seminar shume te vshtira? Apo shon ato shum te lehta?

Ishin normale, te kapshme.

3.-Ishte organizimi i sesioneve te seminarit i mire?

Mjaft i mire.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin? Cfare ju pelqeu me pak?

Kombinimi i aspekteve teorike me ato praktike.

5.-Keni ndonje ide si te permiresohet organizimi?

me shume kohe per diskutime nga pesnaret. Shfaqje e ndonje videokasete.

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6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pranues me,te mira apo shkelqyeshem?

Jo. Sortëlimet ishin të pranueshme.

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranueshem,t mire apo te shkelqyer?

Të pranueshëm, veçoj Viktor Ristanin.

8.-Cfare illoj asistence jopidilke shtese do te rekomandonit per projektim CEELI ose CLDP(si t.ilime me perfaqesues shqiptare te CEELI apo CLDP, seminare pregatitore apo me teper materjale te shkruara)?

Seminare pergatitore dhe takime me perfaqesues shqiptarë të CEELI apo CLDP.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminarit? Nëq.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per seminar (Vjeshte,dimer apo pranvere)?

Pranverë dhe vjeshtë.

2.-Ishte koha per seminarin(nga 9^{30}-14^{30}) e pershtateshme

Po.

3.-Ishte vendi i organizimit i pershtatshem?

Po.

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se si te ftohen njer

zit ne seminare te tjera?

Mesuam per menyren e organizimit te bashkimeve dhe pergatitjen e dokumentacionit te N.P; financimin dhe drejtimin e tyre.

Mund te ftohen specialiste nga ndermarrje te tjera te ngjashme se jashtme, juriste, afariste etj.

SI TE BASHKEBISEDOJME, STRUKTUROJME DHE DOKUMENTOJME NDERMARRJET E PERBASHK
NDERKOMBETARE.

SEMINAR PREGATITOR I SPONSORIZUAR NGA ABA/CEELI DHE CLDP.

TIRANE SHQIPERI 13-16Korrik 1993.

PYETJE VLERESIMI PREJ PJESEMARRESVE.

Ky vleresim do te ndihmoje CEELI dhe CLDP qe te shikojne dhe rishikojne temat dhe organizimin e seminarit dhe ti pergjigjen nevojave te Shqiperise per asistence teknike dhe juridike ne menyre sa me efektive.Jeni te lutur tu pergjigjeni pyetjeve te meposhteme ne Anglisht ose Shqip.Mirepresim ko mente apo probleme te tjera per diskutim te cilat mund te shkruhen ne pjese e merapa te fletes.Ju faleminderit per pjesemarrjen dhe bashkepunimin.

TEMATIKE E SEMINARIT

1.-Ishte tema e seminarit e dobishme?Cila pjese ishte me vlefshme?
E vlerësoj seminarin të dobishëm

2.-Ishin temat e trajtuara ne seminar shume te veshtira?Apo mshon ato shume te lehta? Temat ishin interesante. Mënyra e trajtimit të tyre asimilohej lehtë nga auditori.

3.-Ishte organizimi i sesioneve te seminarit i mire?
Organizim i mirë i seminarit. Debati i rrëmbyeshëm etj.

4.-Cfare ju pelqeu me shume ne lidhje me organizimin?Cfare ju pelqeu me pak? Integrimi i auditorit me lektorin. Edhe komisioni im me mjetet e nevojshme ishte i mirë. Mund të silloshin edhe shembuj konkretë të praktikës së SHBA nga Shqipëria ose ndër momentet të veçanta.

5.-Keni ndonje ide si te permiresohet organizimi?

6.-A ju ndihmuan materjalet e shkruara?Ishin perkthimet ne shqip te pra
me,te mira apo shkelqyeshem? Po. Në përgjithësi përkthimi ësh
korrekt

7.-Si do ti vleresonit interpretet(perkthyesit) e seminarit te pranuesh
mire apo te shkelqyer? Në përgjithësi të mirë. Vesoj V. Ristanin

8.-Cfare lloj asistence juridike shtese do te rekomandonit për projekti
CEELI ose CLDP(si t.ë.me me perfaqesues shqiptare te CEELI apo CLDP
seminare pregaditore apo me teper materjale te shkruara)?
Seminaret përgaditore janë të dobishme. Megjithatë mund t
ishte më e dobishme që materialet e shkruara të ishin shpër
më parë.
Nevojat për materialet e shkruara janë të mëdha.

ORGANIZIMI I SEMINAREVE.

1.-A ishte koha e vere sezoni i pershtatshem per organizimin e seminari
N;q.s. nuk ishte,kur mendoni se do te ishte koha e pershtatshme per semi
(Vjeshte,dimer apo pranvere)? Vjeshta dhe Dimri janë periudhat
më të

2.-Ishte koha per seminarin("ga 9^{30}-14^{30}) e pershtateshme Po

3.-Ishte vendi i organizimit i pershtatshem? Po

4.-Cfare mesuat rreth seminarit?A keni ndonje mendim se ci te ftonen njere zit ne seminare te tjera?

Leksionet ishin të dobishme.
Për çdo tematikë të ftohen më vashdë të parë specialistë e fushës.

THE CENTRAL AND EAST EUROPEAN LAW INITIATIVE (CEELI)

Technical Legal Assistance Workshop
Development and Negotiation of Joint Ventures
Tirana, Albania
July 13 - 16, 1993

Evaluation

The purpose of this report is to help CEELI evaluate the substance and administration of the technical assistance workshop program identified above. Your answers to the following questions will assist us in our efforts to best respond to the needs of the Central and East European countries requesting our aid.

Please prepare a brief report that addresses the questions set forth below.

We appreciate your participation and cooperation as we try to ensure that our programs are well planned and efficiently run.

Thank you.

Format

At the top of the page, please write your name, address, phone number, and the topic(s) that you addressed at the workshop.

I. Organization

Please comment on the organization of the program.

II. Reactions

(a) Comment on the program as a whole. Was it worthwhile?

(b) Please describe your personal reaction to the workshop and trip. Did you find the experience rewarding?

(c) Please describe in detail the reaction of the Albanian participants. Include comments during any "break-out" sessions.

4''

III. Description of the Workshop Sessions

(a) In your opinion, were the discussions at the workshop sessions relevant to the interests and needs of the Albanians?

(b) Were all of the participants (U.S. and West European) well prepared for this workshop? Did the non-local participants become sufficiently engaged in the discussion?

(c) Was the format for presentation of topics effective? Were the topic areas adequately covered?

(d) During workshop discussions, what issues generated the most concern and/or controversy among the Albanian participants?

(e) Please add any further comments you wish to make.

IV. Follow-Up

What would you recommend for follow-up activity on the part of CEELI to further the benefits to be derived from the workshop program?

Dott. Proc. CLAUDIO COCUZZA
Piazza Castello 20
20121 Milano
Tel.: (02) 87.87.89 - 87.85.70
Fax.: (02) 87.86.43

Milan, September 6, 1993

Lisa Dickieson, Esq.
Central and East European
Law Institute
American Bar Association
1800 M. Street, N.W.
Suite 200 South
Washington, DC 20036-5886

Via telecopier

Re: Joint Venture Workshop

Dear Lisa:

Thank you for your fax of September 3, 1993. Here follows my evaluation report.

1. Organization

The program was fairly well organized as far as technical support, lodging and accomodation, all in comparison with the extremely poor Albanian standards.

However, on the organizational side, I would have expected a much larger participation of students from other ministries besides the one of Foreign Trade. I would suggest that the next Seminar is held in a "neutral" place, and, most importantly, that an effort of advertising the session is made in other ministries, also through the help of other local aid organizations.

I do believe that the tremendous effort of the sponsors and, also, of the teachers, would have deserved a larger odeons.

2. Reactions.

(a) It certainly was worthwile: during the four day I was able to feel concretely the growth of interest and the increasing participation of the students. I believe the seminar was intended to give an overview of the basic joint venture instruments and of various issues concerning receiving foreign investments in Albania: ultimately, we attained the above basic purpose of the seminar.

(b) My personal experience has been extremely rewarding: I would be ready to do it again. I was extremely happy of having established a good personal relationship with

the faculty members and with the CEELI and the Commerce Department friends.

(c) I was surprised of the strong curiosity of the Albanian participants vis-à-vis the issues presented and discussed. I have found, however, an extremely low level of technical preparation and a serious difficulty to mentally adapt in a "market economy" environment.

I think that the case study approach and the socratic method are the best techniques to get the involvement and the active participation of the odeons.

3. Description of the Workshop Session.

(a) I believe they were.

(b) Yes.

(c) We had to change the format rather drastically after the few initial moments; a purely academic approach would have been totally ineffective.

The topic areas were too many. I would suggest - for a next time - to reduce them.

(d) Privatization of property and management control were the most debated issues.

4. Follow-Up

I would recommend to do it again on a broader scale and with a much larger participation.

* * *

I hope the above scattered remarks will be usefull.

Should you have any questions please do not hesitate to call me.

Kindest regards.

Sincerely yours,

Claudio Cocuzza

CC/mgp/C:L.Dickis.2L

O & C Corporation
5901 Lakeside Boulevard • Indianapolis, Indiana 46278 • Phone (317) 290-5000 • Fax (317) 290-5011

September 10, 1993

Lisa B. Dickieson
AMERICAN BAR ASSOCIATION
CENTRAL AND EAST EUROPEAN
LAW INITIATIVE
1800 M Street, N.W.
Suite 200 South
Washington, DC 22036

Re: International Joint Venture Technical Assistance Workshop
Tirana, Albania

Dear Lisa:

As I mentioned on the telephone, corporate life has been particularly challenging since returning from Tirana. Addressing environmental problems in three states, defending a toxic tort suit in another, convincing the media to report our company's message, and announcing further austerity measures to company employees in a severely depressed industry are real life market economy problems that could provide material for an advanced seminar in Eastern Europe. During these events, the enclosed photographs of the workshop remained undeveloped.

One advantage of letting time pass is that it gives time for reflection -- time to reconsider first impressions. And one of the benefits that comes with experience is confidence in one's ability to recognize success and its opposite. The wave of first impressions of accomplishment and satisfaction that all participants -- Albanian, American, and Italian -- felt at the conclusion of the workshop remain unchanged. Although it may be difficult to say with modesty, I can say with conviction that by any objective benchmarks one selects, the workshop was a remarkable success.

The wave of first and lasting impressions that provide this feeling of accomplishment include:

- The positive feedback received from the Albanian participants -- who expressed how much they sincerely appreciated and benefited from the real life format of the workshop -- made the tremendous effort worthwhile. I heard their message that the case study, working through the defective joint venture agreement, actually negotiating critical features of the joint venture, role playing, and interacting with the faculty each day all contributed to the excitement, challenges, and success they experienced.

- CEELI and CLDP -- and, in particular, you, Linda Wells, and Susan Gurley -- are to be commended for the insight, ingenuity, and courage demonstrated in

sponsoring and organizing a workshop that abandoned the traditional "lecture and listen" format characteristic of too many professional seminars and so called workshops. To CEELI's and CLDP's credit, the Albanian participants were left with hands on training, valuable experiences, and working tools that they can and will use when negotiating, structuring or documenting their next joint venture. Contrast this result to a set of dry, stale notes -- the all too familiar product of unimaginative, "lecture and listen" presentations.

- In hindsight, I cannot think of a group of professionals that I would have rather worked with on this project. In addition to professional competence, you, Linda, Susan, Nancy, Claudio, and Roland each brought to our team something special, something unique, that when blended in proportions determined by the needs of the project, produced results not otherwise thought possible. Given the unique and challenging circumstances encountered in organizing and presenting this workshop in a land blessed by God and misled by man, I did not believe that such cooperation, coordination, and synergy were possible between and among the two sponsors and the faculty members.

Rather than continuing with my impressions of what was accomplished, I will leave you with a few modest suggestions:

- This kind of "participatory" training and technical assistance is needed throughout Central and Eastern Europe. The workshop should be repeated in Albania and replicated elsewhere in the region. When the workshop is repeated in Albania, get more Albanians involved in promotion of the workshop in other to reach more of the target audiences we initially identified. Move the site of the workshop from the Ministry of Trade and Foreign Economic Cooperation to a neutral site such as the Hotel Dajti so the workshop is not associated with any particular ministry.

- The case study format and the participatory exercises we developed and, at times, improvised, work well in actual practice. They can be improved through fine tuning, further experience, and slight modifications to make the materials country specific, but one fear that we had proved entirely unjustified: The same case study and related teaching materials can be used to introduce basic as well as sophisticated concepts regardless of the level of prior training and experience of the participants. The materials are flexible enough to allow the faculty to gear up or gear down based on the degree of sophistication of the participants and the feedback received from them.

- Create additional incentives that encourage perfect attendance by all participants. Have the courage to accept that something other than our shared values of self motivation and self improvement may be necessary in Eastern Europe to compensate for the demands of daily work and living that are far different than those we encounter in the United States. To remove disincentives to daily attendance, try the unconventional. For example, provide afternoon lunch, distribute small gifts like pocket legal dictionaries or other books, and pay a modest cash stipend for daily or perfect attendance. (The idea of actually compensating participants proved very effective according to another AID contractor in Eastern Europe who makes a convincing argument for a technique that sounds "foreign" to us.)

- Consider increasing the length of the workshop by one-half day. Start with a half day session and end the week with a half day session followed by the closing reception. The extra time could be effectively used and is preferable to extending the length of the daily sessions.

- Consider sponsoring two related workshops: one on Albania's new company, accounting, commercial and trade register laws and one on international commercial arbitration and alternative dispute resolution. Our experience with the joint venture workshop and my actual work experience in Eastern Europe and professional and academic interests in these topics suggest the need for training in these areas.

In closing, I want to thank CEELI and CLDP and, in particular, you and Susan Gurley, for all of the organizational support you provided and for your kind remarks regarding my contributions to the success of the workshop.

Very truly yours,

A. David Meyer
Vice President
General Counsel

cc: Linda A. Wells
Susan K. Gurley
Nancy Eller
Claudio Cocuzza

Negotiating, Structuring and Documenting International Joint Ventures Workshop: Tirana, July 13 -16, 1993

CEELI -- Central and East European Law Initiative
CLDP -- Commercial Law Development Program

Nancy Eller
White & Case
66 Gresham Street
London, EC2V 7LB
England
tel: (44 71) 726 6361
fax: (44 71) 726 4314

Topics Discussed:

(1) Types of International Joint Ventures and Other Cooperative Relationships;

(2) Selecting the Legal Form of the Joint Venture and the Legal Form of the Joint Venturers;

(3) Overview of How to Negotiate a Joint Venture;

(4) Overview of Letters of Intent;

(5) Overview of Key Joint Venture Agreement Clauses.

I. Organization

I thought the organization of the program was fine in large part because it was not only very comprehensive but also flexible. Although we worked extensively on an outline for each of the topics covered in the program, we were able to change the amount of time devoted to particular discussions once we saw that we could use the time in a more productive manner.

II. Reactions

The program was very worthwhile in several aspects. First, on a substantive level, the Albanian participants learned about international business transactions. In that context they learned a little bit about Albanian law (for example, we discussed several times in the capital contribution section what the recently enacted Company Law does and does not permit to be contributed to the capital of a company) and about the importance of ensuring that a particular transaction complies with relevant law. Second, with the exercises, they were able to apply analytical skills, such as when they had to determine what assets could be contributed to the capital of a company and by what method.

And third, the participants obtained exposure to people from other cultures (Italians, Americans), consistent with the opening up of Albanian society over the last several years.

I found the experience very rewarding professionally and personally. In a professional sense my preparation for the workshop required me to reduce complicated legal transactions to their most fundamental level, which now comes in handy on subsequent transactions when I have to explain to non-lawyers the basics of a joint venture transaction that I am representing them on. On a personal level, I don't get many opportunities to do pro bono corporate work - I very much enjoyed the experience of teaching to people who were eager to learn, particularly in a country where I have had business dealings.

III. Description of the Workshop Sessions

I think some of the discussions may not have been directly relevant to the day-to-day professional needs of most of the workshop participants; however, I think the learning experience and the exposure to more sophisticated levels of legal analysis was invaluable.

I thought everyone was well prepared for their discussions, and everyone was willing to revise their preparation during the four days of the workshop to tailor the talks to the sophistication and interests of the participants. I don't recall too many non-local participants (one Italian participant was quite eager to share his experiences with me during one of the breaks, but other than that he did not speak much during the sessions).

As mentioned above, I think the format and breadth of topics covered was very good, and by lasting four days, it allowed the presenters and panel leaders a chance to fine-tune their talks and exercises over the course of the program.

Certain legal issues generated the most discussions, such as the applicability of Albanian law to the activities of the joint venture company formed in Albania and the choice of law provisions. I think the overview discussions were useful to provide a basic legal background for the exercises but they did not on the whole generate the most discussions (see below).

I think the most useful parts of the workshop were the role playing exercises and the group discussions. Although only a few people asked questions, these few people asked quite a lot of questions and everyone seemed interested in the replies and sometimes very animated discussions. I noticed that after the first day or so, when we broke into group discussions, some of the Albanians were more likely to challenge the statements made by some of their colleagues if they disagreed with them (I noticed this mostly in the last

group discussion where we identified errors or omissions in the draft Durres Battery joint venture agreement).

IV. Follow-Up

Follow-up activity might include:

(1) ensuring that all the people who attended this workshop receive invitations to all legal programs subsequently undertaken in the country; and

(2) giving each participant a copy of any article that has appeared in a recent legal journal discussing any aspect of a joint venture transaction that was discussed during the workshop (for example, an article which discusses the problems within a transaction because the two sides could not agree on valuation of assets, or because one side adopted a very confrontational negotiating stance, or what types of assets were contributed to a joint venture by the two sides to a transaction, etc.). I'm not sure if this is the sort of thing CEELI would consider doing, given the logistical problems of getting materials to people, and the fact that many have some trouble with English, however, I think that seeing a practical application of something that was discussed would be interesting for the participants.

Faculty Assessment of Workshop
Negotiation and Drafting of Joint Venture Agreements
Tirana, Albania
July 1993

by Linda A. Wells

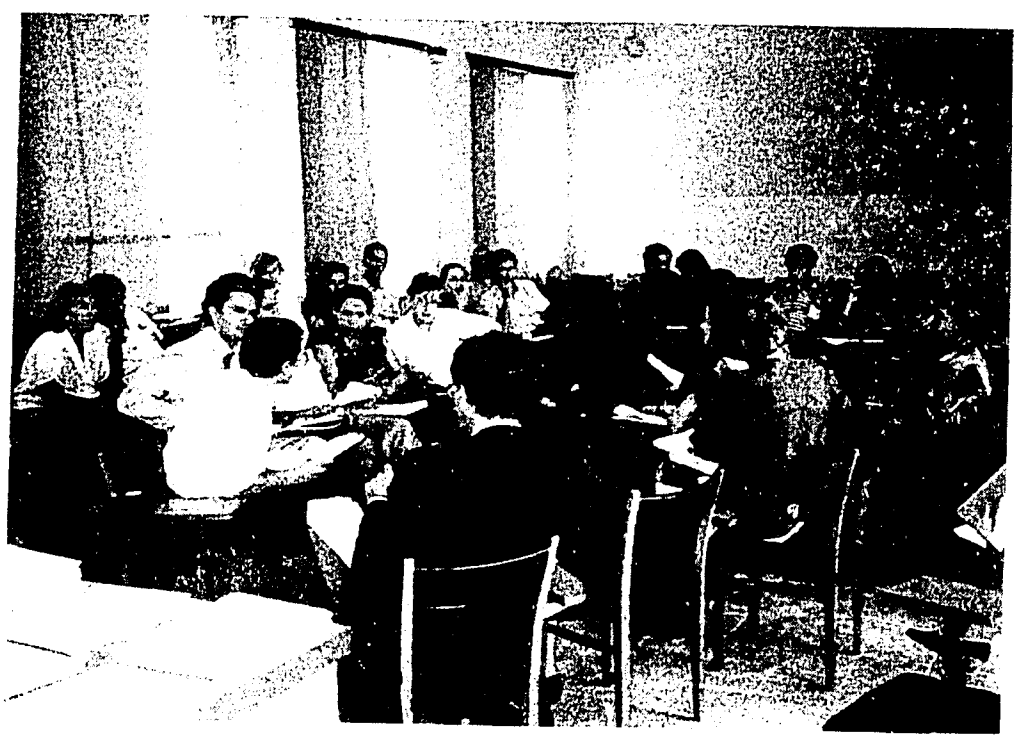
I believe that the primary benefit of this workshop will be twofold: improved self-confidence and enhanced awareness of the needs and objectives of parties to commercial transactions (and how those objectives should drive a transaction). Both of these should lead to smoother negotiations and more appropriate commercial deals, and should facilitate the participants' performance of official duties only indirectly related to commercial matters.

The Albanian participants may now be able to overcome the frequently expressed concern that they are being taken advantage of by foreigners; they now have the tools and some basis for beginning to anticipate and understand the importance of typical terms and negotiating strategies utilized in such transactions. They also have practiced crafting their own terms and strategies, so they will feel, and be, in more control of the shape of the transaction.

Of equal importance, I believe the workshop was a highly effective tool for teaching the participants to learn to identify their proper objectives, to anticipate the objectives of other parties and to devise and assess the options presented against those objectives. This will help them arrive at better business decisions, and if they can carry these skills into their roles as regulators and managers and businesspersons, better policy and regulatory decisions as well.

One of the greatest problems businesspersons face in the emerging market economies is that the government officials who regulate them do not anticipate or understand the impact of their official actions on the business sector, and one of the greatest handicaps on the effectiveness of these same regulators is that they do not anticipate how the business community will respond to their official actions. This lack of awareness often leads to unintended and inefficient results and frustration on all sides.

CEELI/CLDP Training Seminar
and Workshop on How to Negotiate,
Structure and Document International Joint Ventures
Tirana, Albania
July 13 - 16, 1993



APPENDIX 3

Final Report from Emily Altman CEELI's Legal Specialist to the Lithuanian Ministry of Finance

American Bar Association
Central and East European Law Initiative
(CEELI)

Final Report of Legal Specialist
to Lithuania Ministry of Finance
May - August, 1993

Vilnius Lithuania
October, 1993

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4/26

CEELI
CENTRAL AND EAST EUROPEAN LAW INITIATIVE
A Project Developed by the Section of International Law and Practice

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October 25, 1993

The Honorable Eduardas Vikelis
Minister of Finance
Republic of Lithuania
Ministry of Finance
Sermuksniu, 6
Vilnius 2600, Lithuania

Dear Mr. Vikelis:

On behalf to the American Bar Association Central and East European Law Initiative (CEELI), we are pleased to provide you with the final report of Emily Altman, CEELI Legal Specialist to the Ministry of Finance from May through August, 1993.

CEELI provided Ms. Altman in response to a request by your Ministry for the assistance of an expert legal specialist to work and consult with the staff of the Ministry in matters relating to credit agreements with international lending organizations as well as commercial banks.

This final report is a summary of Ms. Altman's experience at the Ministry as well as a candid appraisal of the difficulties still faced by the Ministry along with recommendations to aid in their solution. However, the views expressed herein have not been approved by the House of Delegates or the Board of Governors of the ABA, and accordingly, should not be construed as representing the policy of the ABA.

Ms. Altman felt her time at the Ministry to be both worthwhile and rewarding. We hope her report will be useful to your efforts. We appreciate the opportunity you have given us to work with you in this vital area. We hope there will be future opportunities to work together on this and other matters.

Sincerely,

Mark S. Ellis,
Executive Director, CEELI

cc: Homer E. Moyer, Jr., Chairman, CEELI Executive Board
R. William Ide, III, President, ABA
J. Michael McWilliams, ABA Board of Governors Liaison

Emily Altman is a corporate attorney with a large New York law firm. Ms. Altman possesses significant expertise and vast experience in the complex legal arena encompassing international financial transactions. More specifically, her vast experience includes work on the following projects: syndicated bank loans and export finance transactions involving, inter alia, Turkey, Venezuela, Mexico, Kenya, the World Bank, United States Export-Import Bank, International Finance Corporation, and Overseas Private Investment Corporation; sovereign debt restructuring of the Dominican Republic, Mexico, Argentina, and Brazil; and project financing in Nigeria, Australia, and New Guinea.

SUMMARY REPORT

Date: **October 14, 1993**

To: **Central and East European Law Initiative**
American Bar Association

From: **Emily Altman**

Re: SPECIALIST VISIT -- MINISTRY OF FINANCE / LITHUANIA
May 13, 1993 - August 11, 1993

Purpose of Visit

The Lithuanian Ministry of Finance requested in March 1993 that CEELI arrange for a lawyer familiar with international loan transactions to work at the Ministry for a period of three to four months to assist it in its review of credit agreements being submitted to it by the G-24 countries and multilateral lending organizations. I am lawyer at Davis Polk & Wardwell in New York City, specializing in international finance transactions, and I spent from May 13, 1993 through August 11, 1993 in Vilnius working with the Ministry as a CEELI specialist.

The Ministry of Finance: the Debt Management Division and its Work

At the time of my arrival in Vilnius the Ministry of Finance had concluded credit agreements with the World Bank, the European Community and the European Bank for Reconstruction and Development and was in the final stages of signing a loan agreement with the Export-Import Bank of Japan. Those agreements had been negotiated by the Ministry's Debt Management Division -- part of the Ministry's Budget Department -- or, in some cases by the disbanded Ministry of Foreign Economic Relations, in each case with the assistance of a Lithuanian lawyer who was working for that Ministry at that time.

With the dissolution of the Ministry of Foreign Economic Relations, the Debt Management Division inherited principal responsibility for managing Lithuania's foreign borrowing program: negotiating foreign loan agreements, administering loans made under signed agreements, coordinating the

disbursement of loan proceeds and monitoring payments of principal and interest. In May -- and during the subsequent three months -- it became evident that the Central Bank of Lithuania (the Bank of Lithuania) was competing with the Ministry of Finance to become the principal liaison between the Republic and foreign lenders -- despite clear advice from representatives of the United States Treasury and others that decisions concerning sovereign borrowing from foreign lenders were a budgetary function that appropriately fit within the purview of the Ministry of Finance. Nevertheless, tension over the primary responsibility for the borrowing function continued over the summer, not least because the Central Bank has a larger and better paid staff and has been the beneficiary of a great deal of foreign technical assistance which it believes gives it an advantage over the Ministry of Finance in this realm. However, I believe that by summer's end, the Ministry of Finance had, in keeping with the advice of most foreign technical advisors to both the Ministry and the Central Bank, substantially consolidated its administratve authority over the f Lithuania's foreign borrowing program.

The Debt Management Division of the Ministry of Finance is headed by Ruta Skyriene, an extremely able administrator with a sophisticated understanding of finance, who recently returned to Vilnius a year ago after a year in the United States. Ms. Skyriene also heads the Project Implementation Unit (the "PIU"), a sub-unit within the Debt Management Division which was established specifically to manage procurement under and disbursement of the World Bank 's $60 million Rehabilitation Loan.

The PIU is responsible for identifying imports most urgently needed by the various Lithuanian state enterprises (mainly fertilizer, other agro-chemicals, veterinary pharmaceuticals, fuel), and then arranging for such goods to be purchased using the proceeds of the World Bank Rehabilitation Loan. This involves preparing, requesting and analyzing, international bids (all governed by strict World Bank rules), taking bid security and negotiating and opening letters of credit with banks around the world.

In addition, in their role as staff members of the Debt Management Division the members of the PIU review new credit agreements and manage the pricing, disbursement and repayment of Lithuania's other foreign currency credits. The Debt Management Division had only one computer during the summer -- which had been purchased for use in connection with the administration of the World Bank loan. I understand the Division has, since my return to New York, acquired a second computer for use in connection with its other responsibilities.

Before I arrived and all through the summer, the Debt Management Division made a heroic effort to locate and hire an English-speaking Lithuanian lawyer who could work with me and take over primary responsibility for the legal aspects of the foreign borrowing program. However, given the far higher salaries available in the private sector, few practicing Lithuanian lawyers with commercial experience or ambition were interested in a Finance Ministry job. Nevertheless, I understand that a recent law graduate has just been hired and has begun to work through the various credit agreement markups, explanatory

memos and legal opinion drafts I left with Ms. Skyriene. In the absence of a Lithuanian lawyer counterpart at the Debt Management Division I was not able to make as much progress as I would have liked towards helping the Ministry to realize its goal of developing an independent capacity to evaluate and negotiate foreign loan proposals or towards laying a consistent legal foundation for future financings.[1] Instead, we mainly concentrated on working through the documentation on the many loan transactions the Ministry was trying to cope with over the summer.

My Work at the Ministry

During my three months in Vilnius I assisted the Ministry in its review of four G-24 loan agreements (Sweden, Finland, Norway and Austria) as well as its review of a proposed Canadian Export Development Corporation loan agreement which was, for bureaucratic reasons, being handled outside the Debt Management Division. I helped to prepare form closing documentation (certificates, legal opinions, etc.) for those four loan agreements, as well as the actual closing documentation for the then recently signed Japan Eximbank loan agreement. In addition, I helped the Ministry to prepare and negotiate an amendment to the Japan Eximbank loan agreement which had been requested by the World Bank to facilitate the latter's administration of this co-financing loan.

With Ms. Skyriene and her staff, I also reviewed, discussed with the European Bank for Reconstruction and Development (the "EBRD") and began evaluating co-financing offers from five Western European export credit agencies -- Denmark, Germany, Switzerland, Finland and Norway -- which had been arranged by the EBRD in connection with its existing facility for Lithuania. On behalf of the Ministry I was in contact with each of the five export credit agencies to discuss the structure of its proposed cofinancing and to propose ways of making all of the EBRD cofinancings consistent with each other to the extent practicable. As word of my presence at the Ministry spread, other Ministries and state enterprises would call for advise on particular agreements.

---

[1] I had wanted, for example, to spend more time than was possible -- given the many competing demands on the Ministry's time -- trying to design a proposed Lithuanian "negative pledge clause" for inclusion in its sovereign loan agreements. That provision, by restricting the kinds of security interests a sovereign borrower may create can either preclude -- or enhance -- the government's ability to enter into future financings. It is a matter of particular importance in the context of an economy in which such a large percentage of income-producing assets remains in state hands. Instead, we did our best -- on an ad hoc basis -- to propose fundamental, and consistent, exceptions to the lien prohibition for purposes of the various agreements we reviewed. I had a phone call, in fact, just last week from the Ministry asking me to tell them which of our negative pledge clauses we were most satisfied with -- because they wanted to propose it for yet another agreement!

For example, a state enterprise called "Maziekai - Oruva" asked that I review the credit agreement it had been negotiating with KfW -- the German export credit bank and, in consequence, I spent several very productive hours with the Oruva negotiating team explaining and discussing my comments and suggestions.

Apart from working on particular loan transactions, I spent a substantial part of my three months at the Ministry of Finance trying to establish and understand the legal regime in Lithuania governing the incurrence of sovereign debt. This effort was motivated by three goals -- to draft legal opinions which were required to be delivered by the Minister of Justice under the various loan agreements the country was signing, to answer questionnaires submitted by various prospective lenders to Lithuania (the European Investment Bank, for example) and to streamline and regularize the process of government authorization and ratification. In connection with this last goal, for example, I proposed that we draft a parliamentary authorization for all of the prospective G-24 loans in order to avoid the need for an individual preliminary presentation to the Parliament in connection with each agreement. and, as a result, such a resolution was passed by the Parliament.

I also assisted with questions arising in the Ministry (and particularly the Debt Management Division) in the normal course of the business: for example, explaining the London Interbank Offered Rate, helping to formulate a definition of Special Drawing Rights, answering questions having to do with payment and collection under letters of credit, helping to evaluate loan pricing for a European Community loan, responding to questions submitted by a Russian entrepreneur interested in opening gambling casinos in Lithunia and even helping to figure out what to do about oil drums which were purchased with proceeds of the World Bank loan and were delivered, leaking, to the port of Klaipeda. I also helped the PIU analyze and assemble a description of arrearages in the natural gas sector which was required by the World Bank in connection with its reallocation of a portion of its loan commitment to the purchase of natural gas.

Summary

I know that the people at the Ministry (and elsewhere in the government) came to value having someone with a great deal of practical experience in international banking transactions and loan negotiations working on their behalf. With the Debt Management Division, I worked through virtually all the foreign loan agreements which had been received by it to date. In addition, during the process of analyzing those agreements I was able to teach the members of the Debt Management Division -- with their enthusiastic participation -- a great deal about the structure of loan agreements and the issues that should be focused on when negotiating them. As a result we made considerable progress (though as noted above less than I would have liked) towards developing the necessary in-house expertise to deal with evaluating and negotiating foreign loans on an ongoing basis. Also, and perhaps most

importantly, I think my work with the Minister and his staff made extremely sensitive to the value of legal advice to the work they do.

The Debt Management Division is very pleased it now has a Lithuanian lawyer specifically designated to work with it. However, the Ministry also realizes that it is still far from having the in-house legal expertise it needs adequately to respond to the sophisticated financing proposals being made to it by the international lending community. In this connection I understand the Ministry has requested that CEELI provide the Debt Management Division with a replacement legal specialist as soon as possible and that it is also exploring with the United States Department of the Treasury the possibility of securing funding, on a longer term basis, for a legal advisor to work with the Division.

The Ministry of Finance also recognizes its need for a sophisticated financial advisor to work with it in evaluating loan proposals and managing, on a systematic basis, the loans being incurred by the Ministry on behalf of the Republic. Such an advisor, acting in cooperation with the Ministry's in-house and foreign legal advisors, could be extremely helpful in addressing one of the major problems facing the Ministry of Finance at the moment -- the problem of "absorption". Substantial amounts of funds for many different kinds of projects are being made available to Lithuania at a relatively rapid pace. The process of determining how to spend the money, however, is lagging behind as a result of the bureaucratic complexity of identifying the country's most urgent needs and matching available financing to those needs. As a technical matter the Lithuanian Ministry of Economy is charged with identifying projects for financing while the Ministry of Finance is charged with procuring such financing. As a practical matter, however, it is the Ministry of Finance, charged with receiving and responding to international loan proposals, which must manage the "absorption process." The difficulties faced by the Lithuanian government in coordinating the two halves of the process -- procuring financing and identifying the uses to which it is to be put -- were apparent during the summer I spent at the Ministry of Finance and must be addressed if the foreign loan funds being made available to Lithuania are to be used to maximum advantage.

I believe -- and am honestly delighted professionally and personally to conclude -- that my time with the Lithuanian Ministry of Finance was an almost exemplary case of foreign legal advice in an Eastern European country. The Ministry of Finance had perceived a definite need for help in a relatively circumscribed area. There was real work to be done. Most significantly, because the Ministry had been coping with the issues raised by loan proposals and the complex accompanying documentation before my arrival, there were real questions to be answered and the answers were understood and appreciated by the six members of the Debt Management Division in the context of actual issues they had been confronting on their own for months. As a result, I believe they now not only feel far more competent to manage Lithuania's foreign borrowing program by themselves but have come to appreciate the usefulness of targeted foreign technical assistance.

APPENDIX 4

Final Report from Kenneth Vandevelde CEELI's Legal Specialist to the Lithuanian Ministry of Foreign Affairs

American Bar Association
Central and East European Law Initiative
(CEELI)

Final Report of Legal Specialist
to Lithuania Ministry of Foreign Affairs
June - August, 1993

Vilnius, Lithuania
October, 1993

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October 25, 1993

The Honorable Povilas Gylys
Minister of Foreign Affairs
Republic of Lithuania

Dear Mr. Gylys:

On behalf to the American Bar Association Central and East European Law Initiative ("CEELI"), we are pleased to provide you with the final report of Kenneth Vandevelde, CEELI Legal Specialist to the Ministry of Foreign Affairs for six weeks from June through July, 1993.

CEELI provided Mr. Vandevelde in response to a request by your Ministry for the assistance of an expert legal specialist to work and consult with the staff of the Ministry in matters relating to bilateral investment treaties.

This final report is a summary of Mr. Vandevelde's experience at the Ministry as well as a candid appraisal of the difficulties still faced by the Ministry along with recommendations to aid in their solution. We include also, the Bilateral Investment Treaty Negotiating Manual Mr. Vandevelde created for your Ministry. However, the views expressed in this report have not been approved by the House of Delegates or the Board of Governors of the ABA, and accordingly, should not be construed as representing the policy of the ABA.

Mr. Vandevelde felt his time at the Ministry to be both worthwhile and rewarding. We trust his report will be useful to your efforts. We appreciate the opportunity you have given us to work with you in this vital area. We hope there will be future opportunities to work together on this and other matters.

Sincerely,

Mark S. Ellis,
Executive Director, CEELI

cc: Homer E. Moyer, Jr., Chairman, CEELI Executive Board
R. William Ide, III, President, ABA
J. Michael McWilliams, ABA Board of Governors Liaison

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Kenneth Vandevelde is an Associate Dean and Professor of Law at Western State University College of Law, San Diego. Dean Vandevelde possesses broad experience in the areas of International Law and Constitutional Law. More specifically, Dean Vandevelde enjoys significant expertise in the more intricate mechanisms of bilateral investment treaties. Dean Vandevelde served for six years as Attorney/Advisor for the State Department, counseling the Department on international trade and investment law and the negotiation of bilateral investment treaties. His publications include, inter alia, United States Investment Treaties: Policy and Practice (Kluwer 1992); "The U.S. Bilateral Investment Treaty Program: The Second Wave," scheduled for publication in Michigan Journal of International Law, Fall 1993; "The BIT Program: A fifteen Year Appraisal," 86 American Society of International Law Proceedings (1992).

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September 17, 1993

Mr. Nnamdi Ezera
Central and East European Law Initiative (CEELI)
Suite 200 South
1800 M Street, N.W.
Washington, D.C. 20009

Dear Nnamdi:

It was great talking with you the other day. I am sorry that we did not get a chance to meet while I was in Washington, but am glad that you are back on the road to good health.

Enclosed is my report on my tour in Lithuania. As you will see, it is in two parts. The first part is an overview of the goals that were set for my trip, the accomplishments from my six weeks in Lithuania, the main impediments I encountered, and a couple of the lessons that I learned. The second part is a daily journal of my activities, inspired by a similar log that George Blow kept when he was in Vilnius. I suspect very few people ever will read beyond the first part. From my own experience, however, I know how valuable George's log was for me and wanted to provide something similar for any legal specialists that succeed me.

Looking back, the six weeks in Lithuania was one of the greatest professional and personal experiences of my life. I am very grateful to you and CEELI for giving me the opportunity to work with this program. Please feel free to call on me for any further assistance you need in either the investment or the rule of law areas. (You and I never discussed the rule of law area, but I teach constitutional law, worked full-time for a year on rule of law projects in Latin America when I was at the State Department, and in fact worked with Sandy D'Alemberte on setting up the Caribbean Law Institute, which was the source of his inspiration for CEELI. So, law reform is a topic which continues to be near to my heart.)

Please stay in touch.

With kindest regards,

Kenneth . Vandevelde
Associate Dean

FINAL REPORT

Kenneth J. Vandevelde
CEELI Legal Specialist
Ministry of Foreign Affairs
Vilnius, Lithuania
June 24 - August 5, 1993

This report describes my activities during a six week tour as a CEELI Legal Specialist in the Lithuanian Ministry of Foreign Affairs (MFA). My assignment was to provide advice and other assistance with respect to bilateral investment treaties (BITs). Attached to the report is a daily log of my activities from my departure on June 24 until my return on August 5.

I. INTRODUCTION

A. Goals

At the time of my selection as a Legal Specialist, CEELI Liaison John Zerr proposed three primary goals for my tour:

(1) to train Lithuanian officials in BIT negotiations so that, in the long term, they would have the competence to negotiate and implement such treaties without assistance;

(2) to provide short-term assistance in the actual negotiation of BITs; and

(3) to define the responsibilities of a series of CEELI advisors on BITs who would succeed me over a period of several months.

B. Accomplishments

My principal accomplishments during the six weeks were as follows:

(1) Analyzed 9 BITs concluded by Lithuania prior to my arrival. The analysis identified potential problems arising from inconsistencies among the treaties, conflicts between the treaties and Lithuanian national law, or incompatibilities between treaty commitments and Lithuanian economic policy. It also proposed solutions for these problems;

(2) Analyzed 13 BITs proposed for negotiation by Lithuania, including one BIT with the United States. This analysis identified inconsistencies between the proposed BITs and past Lithuanian practice with respect to the BITs as well as provisions of the proposed agreements that were deficient technically or based on

unsound policies. It also identified problems of the type described above with respect to existing BITs. The analysis included recommended modifications to be made in the proposed agreements during negotiations;

(3) Drafted a negotiating manual for use by Lithuanian officials in negotiating future BITs. The manual identified each of the provisions that commonly appears in a BIT, discussed the purpose of each provision, described the various formulations in which these provisions appear, summarized the advantages and disadvantages of the various formulations, and noted which formulations had been used by Lithuania in its existing treaties. The manual also incorporated the results of the two analyses described above. It is approximately 96 single-spaced pages in length and was presented to the Prime Minister during a private meeting prior to my departure;

(4) Reviewed and revised a proposed model investment treaty prepared by the MFA. All of Lithuania's BITs to date have been negotiated on the basis of a model treaty proposed by the other party, with the result that the language is that preferred by the other party except to the extent that Lithuania raises a specific objection during negotiations and prevails. This agreement gives Lithuania the capacity to take the initiative in negotiations and to place the other party in the position of accepting Lithuania's preferred language in every case where it cannot prevail with an objection;

(5) Prepared the Lithuanian delegation for the negotiation of a BIT with the United States and assisted the delegation during the negotiations;

(6) Assisted the Lithuanian delegation in preparing for the negotiation of an intellectual property agreement with the United States; and

(7) Prepared and presented a one-hour talk on BITs to an audience of Lithuanian officials involved in the BIT negotiating process.

II. DISCUSSION

Each of my activities in Lithuania was directed specifically at one or more of the three goals established by John Zerr at the beginning of my tour. In this section, I will discuss the steps taken with respect to each goal, the problems encountered and the progress made.

A. Training

Four different training techniques were used.

The first and perhaps most effective technique was the preparation of the negotiating manual. The manual constitutes a source of training that will endure for years after the termination of my tour or the departure of the officials with whom I worked. The U.S. State Department prepared a similar document at the inception of its BIT program and for about a decade that document was the primary means of training new lawyers given responsibility for the BIT program.

The second training technique was individual meetings with the relevant officials. During my six week tour, I had several lengthy private meetings with the Deputy Minister of Foreign Affairs, the head of the economic affairs bureau, the head of the international economic treaties department and various staff attorneys and economists concerning the BITs. The most gratifying feature of these meetings was that they were unfailingly substantive. From the Deputy Minister on down through the hierarchy, each official with whom I dealt came prepared for clause-by-clause discussions of specific treaties as well as for more general discussions of the BIT program as a whole. I was quite satisfied that these meetings had a positive effect. This was most notable in the meetings I had concerning the pending U.S. negotiations or the proposed Lithuanian model BIT. The knowledge gained by Ministry officials in these dicussions resulted in observable changes in their negotiating position and in the language of the model agreement.

The third training technique was assistance in actual negotiations. It was fortunate that the United States sent a delegation to negotiate with Lithuania during my tour. The pendency of an actual negotiation, particularly one with a major investor, provided me with numerous opportunities to talk about how one prepares for and conducts a negotiation -- at a time when officials were faced with precisely that problem.

The fourth training technique was lectures or discussions involving large groups. Although I had envisioned several such large group lectures or discussions, ultimately only one was scheduled during my tour. Such sessions are useful because of the substantive information they impart and because they advertise the presence of the CEELI legal specialist and break the ice between the specialist and officials who may not have an immediate cause for contact with the specialist, thereby increasing the likelihood additional, private meetings with such officials.

The training function faced three major impediments. First, Sigute Jakstonyte, the head of the international economic treaties division and the principal official with whom I was to work, took a lengthy vacation at the end of my first week in Lithuania. The

vacation, of course, made her completely unavailable for much of my stay and, because of the work backlog it created, left her largely inaccessible for the remainder of my tour. Although we managed to have several productive meetings, these were put together with great effort and occurred under considerable time pressure. Leisurely and wide-ranging discussions simply were not possible.

Further, it was Sigute who was charged with setting up the large group meetings of BIT officials that I requested. Because her absence came so early in my trip and with only a couple of days' advance notice, we ultimately were able to have only one such meeting, near the end of my stay, with the result that some of the working relationships that the meeting was intended to foster never materialized.

The second impediment was the dismissal, at approximately the mid point of my tour, of the two Deputy Ministers with whom I was in contact, one of whom was Algirdas Miskinis, the Deputy Minister with primary responsibility for the BIT program. At the time of his ouster, I had spent more time in substantive discussions with Deputy Minister Miskinis than any other single official and thus his departure represented the loss of a significant investment. Further, it is not improbable that his successor could replace other personnel within the ministry, with a further loss of investment.

The third impediment was the refusal of the U.S. delegation to permit me to attend its negotiations with Lithuania. Although I participated by sending messages into the negotiations via one member of the Lithuanian delegation, the U.S. refusal deprived me of my only opportunity to observe first hand the Lithuanian negotiating technique and to identify deficiences in their substantive knowledge that might not surface in any other setting.

B. Assistance with Negotiations

Assistance with negotiations took two forms: the preparation of certain documents and oral discussions with Lithuanian negotiators.

The most important document was the negotiating manual. The manual was intended not only to provide training in advance of negotiations, but to serve as an immediate source of assistance during negotiations. By setting forth the principal formulations in which each type of provision generally appears, the manual permits negotiators ready access to alternative language in the event that proposed language is unacceptable for political, stylistic or other reasons. By summarizing in a single place Lithuania's entire prior practice with respect to a particular clause, the manual allows negotiators to determine at a glance whether a proposed clause would represent a change in policy or

whether it has precedent in a treaty previously approved by the Lithuanian government. By identifying the advantages and disadvantages of various formulations, it assists negotiators in deciding whether to agree to alternative language proposed during negotiations.

The analysis of the 13 proposed agreements, which was incorporated into the negotiating manual, also should provide very concrete assistance in specific negotiations during the next couple of years. Each agreement is analyzed separately, clause by clause. The analysis includes numerous recommended modifications to the language of these treaties, ranging from suggestions that a particular word or phrase be changed to suggestions that entire provisions be added or rejected. These, in effect, are the precise recommendations that I would make if I were in a position to advise the Lithuanian government during these 13 proposed negotiations.

The other document that will provide concrete assistance in actual negotiations is the model agreement which I helped the Ministry prepare. Although the model was prepared in Lithuanian, the English text will be the primary negotiating text. One of the MFA attorneys noted that the translation into English had been performed by one of the MFA's less capable translators. Although errors were not too numerous, there were a few phrases or passages that were nonsensical. My assistance went beyond the translation of the document, however. In several cases, Lithuanian attorneys were completely unaware of the implications of particular phraseology. In some instances, language they had selected had the precise opposite of the intended effect. As with the manual, the model agreement is a tool that will be of concrete assistance in future negotiations for years to come.

A second form of negotiating assistance was my discussions with the Lithuanian officials prior to and during the U.S. negotiations. I had several tangible indications that this assistance affected the negotiations. First, I was able to resolve several issues before the U.S. team arrived. Indeed, the number of issues resolved prior to the team's arrival exceeded the number resolved during the two days of negotiations. One of the very few changes agreed to during the U.S. visit was a clause I had proposed to protect the Lithuanians against expropriation claims dating from the Soviet occupation. Following the departure of the U.S. delegation, the head of the Lithuanian delegation told a friend, who relayed the comment to me, that she had felt very well prepared for the negotiations as a result of my discussions with her. As it happened, my work with the Lithuanian negotiators on the model agreement after the departure of the U.S. delegation may have resolved a couple of other issues. This occurred because the better understanding of the treaties gained during the drafting of the Lithuanian model caused them to reconsider positions taken during the U.S. negotiations.

The assistance with negotiations suffered from only one

impediment: the refusal of the U.S. team to allow me to observe the negotiations. The severe limitations this imposed are self-evident.

C. Defining the CEELI Advisor's Role

In all candor, from the beginning I had some ambivalence about the goal of defining a role for a succession of advisors. In my mind, the first two goals were directed at making the Lithuanian government self-sufficient with respect to BIT negotiations. It seemed that any effort to institutionalize the role of a CEELI advisor would run counter to efforts at self-sufficiency. Even the mere expectation of additional advisors in the future could foster a feeling of dependency while undercutting any sense of urgency in achieving self-sufficiency, which would impede my progress with respect to the first two goals.

It also seemed that the role of the CEELI legal specialist would continually evolve, for two reasons. First, some tasks are accomplished in a defined period of time and then need not be repeated. For example, the preparation of the negotiating manual, the analysis of the existing agreements, and the drafting of the Lithuanian model BIT all were critically important projects and they occupied most of my time in Lithuania, but these tasks have been completed and thus even my immediate successor would have a quite different role than I had. Second, at least to the extent that the early specialists were successful in truly developing the capabilities of the Lithuanian officials, later specialists would have a much diminished role.

These intuitions were strengthened upon my arrival, when I learned of Sigute's impending vacation. The more I appeared to be the first of many advisors, the less important it was to use me well while I was in country. Only in my last week, when it became apparent that I would not be succeeded in the immediate future, did the Lithuanian officials begin to betray any sense of a lost opportunity.

On the other hand, there were some ways in which institutionalizing the BIT advisor's role seemingly could be productive. First, although a BIT advisor had been requested by a Deputy Minister, one could not assume that officials at the working level would share the Deputy Minister's desire for an advisor. Indeed, John Zerr had urged that I attempt as quickly as possible to demonstrate the value of BIT expertise, which would encourage Lithuanian officials to use me and to develop such expertise among themselves. Second, it obviously made sense for me to ensure that my successor would not have to waste time and effort retracing my steps.

Accordingly, I decided that the third goal would complement

the first two goals if I directed my efforts in two directions: showing the Lithuanians in what ways BIT expertise could be used and providing a solid orientation for my successor so that he or she could begin at precisely the point I left off.

The principal difficulty that I encountered was the impossibility of developing a stable working relationship with the officials involved in the BIT program. As has been noted, the principal attorney charged with responsibility was absent for almost half the time I was in Lithuania, including the period in which the U.S. negotiations occurred. Both Deputy Ministers with either an interest in, or authority for, the BIT program were dismissed during my six week tour, with no replacements named as of the end of the tour.

Ultimately, John Zerr and I concluded independently that I should not have an immediate successor, primarily for two reasons. First, as of the beginning of August, there was not a stable group of personnel with whom a successor could work. Not only had the Deputy Ministers not been replaced, but it appeared possible that their replacements when named might make further changes in key working level staff. Even those personnel destined to retain their jobs were likely to be away on vacation during much of the time immediately following my departure. The Ministry simply was not in a position to take advantage of a specialist as of August 5. Second, those treaties that were planned for negotiations in the foreseeable future already had been analyzed, leaving a successor with relatively little substantive work to do until the time actual negotiations commenced. Training could be done at any time, but would be more effective if conducted in the shadow of negotiations because the impending negotiations tend to focus the attention of the Lithuanians and provide opportunities to practice their newly acquired knowledge and skills.

III. CONCLUSION

CEELI can take some pride in the amount of substantive work that was accomplished during my six weeks. The Lithuanians have an analysis of their 9 existing treaties as well as 13 treaties planned for negotiation over the next several months; a 96 page training manual to assist them in those negotiations; and a model negotiating text that will enable them to initiate negotiations with other countries.

From my experience, I might suggest a couple of lessons for the future.

First, legal training and technical assistance programs produce inherently perishable results because of the ever present possibility that key personnel will be replaced. Like breakage in a china shop, it is an inevitable cost of the enterprise. We may

wince when it occurs, but in the end we know that it will occur.

The saving grace is that the investment in particular officials is not necessarily lost when they are replaced. Jurate Zabeilaite provides an excellent example. A former attorney in the Ministry of International Economic Relations whose formal involvement in the BIT program ended when the MIER was dissolved last year, she has maintained her ties with CEELI and during my stay she was by far the single most useful source of information about the Lithuanian BIT program. Given the fluidity of Lithuanian politics, it is not unreasonable to expect that many officials replaced will find their way back into power over a period of a few years, providing a further return on the investment. This suggests that, in selecting individuals for training and assistance, CEELI should look for those who are a position to use such training and assistance now, but also for those who have a long term potential that transcends their immediate responsibilities.

Second, CEELI is right to look for advisers with as much directly relevant experience as possible. John Zerr had warned me that the Lithuanians would not be sure how to use me and he could not have been more right. In six weeks, I cannot recall a single meeting or a single project in which I was involved that was not at my instigation. If I had not had a clear idea of what needed to be done and how to do it, the six week tour would have come to nothing.

DAILY ACTIVITY LOG

Kenneth J. Vandevelde
CEELI Legal Specialist
Ministry of Foreign Affairs
Vilnius, Lithuania
June 24 - August 5, 1993

Thursday, June 24: Travel from San Diego to Washington for orientation.

Friday, June 25: Orientation at CEELI offices in Washington, which included meetings with CEELI staff and CEELI Director Mark Ellis. CEELI Deputy Director Mike Diedring took me to meetings at A.I.D., Commerce and the International Centre for Settlement of Investment Disputes (ICSID). I told Mike that my sources at State had said that a U.S. Bilateral Investment Treaty (BIT) negotiating team probably would be in Vilnius during my stay and asked whether CEELI was concerned about a conflict of interest were I to assist the Lithuanians. Mike noted that George Blow, an American attorney who served as a legal specialist to the Lithuanian Ministry of International Economic Relations (MIER) on BITs for 8 weeks in the fall of 1992, had actively participated in negotiations with the U.S. team during its last visit to Vilnius.

When we returned to CEELI's office, I called George Blow, who was very helpful. We discussed my concerns about a potential conflict of interest. George sent over to CEELI by messenger a copy of the report on his tour in Lithuania, the format of which has served as a model for this daily log.

In the evening, I departed for Vilnius from Dulles Airport. The flight left about an hour late.

Saturday, June 26: Because of the delay in leaving Dulles, my flight was late arriving in Frankfurt by about an hour, which meant that my flight for Vilnius already had left. Delta Airlines found a flight for me leaving on Sunday, requring me to stay overnight in Frankfurt.

Sunday, June 27: Departed Frankfurt for Vilnius. CEELI Liaison John Zerr, his wife Maria, and Alina Kaledinskiene of the CEELI Commercial Law Center, met me at the airport. Along with CEELI legal specialists Emily Altman and Bill Walters, John, Maria, Alina and I attended a Lithuanina folk festival where I met, among others, former Deputy Minister of the MIER Gintaras Pukas, who negotiated virtually all of Lithuania's existing BITs, and Jurate Zabielaite, former Legal Adviser to the MIER during the BIT negotiations.

Monday June 28: This morning John took me to the Ministry of

Foreign Affairs (MFA) to meet Sigute Jakstonyte, the head of the economic treaty department of the Ministry. She reports directly to Deputy Minister Algirdas Miskinis and has primary responsibility for the legal work with respect to the BITs.

I asked Sigute for copies of all BITs previously concluded by Lithuania and of any BITs currently under negotiation. Sigute told me that the only negotiations scheduled were with the United States. I also asked for a copy of the Lithuanian constitution and any current or proposed Lithuanian laws relating to corporate formation or foreign investment. Sigute provided me immediately with a compilation of Lithuanian laws in English and I spent most of the day reading it.

In the afternoon, Sigute took me to meet Deputy Minister Miskinis, who supervises the negotiation of the BITs. Miskinis expressed concern about mistakes that may have been made in the treaties already concluded, explaining that the existing agreements were negotiated by the MIER, which was dissolved in late 1992. I mentioned that I already had requested copies of these agreements and would provide him with an analysis of them in a few days. I also told him that, while in Lithuania, I hoped to prepare a negotiating manual that would assist Lithuania in future negotiations. He seemed quite interested in the idea of the manual. He also asked me to analyze the draft foreign investment law and, in particular, to provide a comparison of Lithuania's law with similar laws from other states, including particularly those not in Eastern Europe. He seemed anxious that Lithuania be regarded by investors as like a western state, rather than pigeon-holed as another former Soviet republic.

I asked whether there were regular interagency meetings of the officials involved in the BIT program. Miskinis said that there were many such officials, but that they did not meet on any regular basis. I suggested that such meetings were important so that Lithuania could decide on its policy before negotiations. We agreed that Sigute would organize a meeting of the group at the earliest possible date so that I could meet them and discuss my recommendations for the program.

Somewhat oddly, Miskinis ended the meeting by expressing the hope that we would see each other again before I left Lithuania. I was surprised because I had assumed that we would work together on a regular basis.

The transfer of responsibility for these agreements from the MIER to the MFA provides me with an interesting opportunity because no one in the MFA feels responsible for the past agreements. Sigute and Miskinis both seem quite open to criticism of past negotiations and suggestions for ways to improve.

I met with John at the end of the day. After summarizing the day's activities, I told him that, while I was in Washington, ICSID had offered to provide Lithuania with a free subscription to the ICSID Review, which is the single best source of legal commentary and analysis in the area of foreign investment law and BITs. We agreed that we would attempt to get three subscriptions from ICSID: one for the commercial law center, one for the MFA, and one for the

Ministry of Economics.

I also met Algis Rimas, the CEELI intern at the commercial law center. Algis pointed out that the compilation of Lithuanian laws given me by Sigute was out of date. He gave me an updated copy of the material that I had spent the day reading.

Tuesday, June 29: In the morning I began work on the negotiating manual. John took me to a meeting at the American Embassy with John Cloutier, the A.I.D. representative with responsibility for the CEELI program. I also met with Al Rimas, the economic officer at the Embassy (and Algis Rimas' father) to discuss American investment in Lithuania in preparation for the negotiations with the United States.

In the afternoon, I obtained copies of Lithuania's existing BITs from Lina, my secretary at the MFA. On a hunch, I asked Lina, who is also Sigute's secretary, whether Sigute was planning to be away on vacation at any time during my six weeks. Lina said that she did not know and that I should ask Sigute. I sought out Sigute and was alarmed to learn that she would be gone from July 3 until July 21, with the U.S. team scheduled to be in Vilnius on July 19-20. Sigute did not know who would take her place on the delegation, who else would be on the delegation or who would chair it. None of this has been decided yet and there appear to be no plans to prepare for the negotiations. I am concerned that Sigute did not mention her vacation plans, given that she is leaving at the end of this week and will be away for most of the remainder of my time in Vilnius. I was also surprised that Lina had not been informed that Sigute was leaving at the end of the week. This does not seem to be place where anyone volunteers information.

I asked Sigute if, before her departure, she could set up a meeting for me with whoever appeared to be most likely to be involved in the U.S. negotiations. She promised that she would.

Wednesday, June 30: Today was spent analyzing Lithuania's BITs with Sweden, Denmark, France, Finland, and Norway. I drafted and faxed a letter to Linda Wells at Commerce requesting copies of other countries' foreign investment laws so that I could perform the analysis requested by Miskinis. Lori Feathers from Commerce called to say that Linda would bring copies of the laws for Eastern Europe when she came to Vilnius next week, but that she was not aware of any office in Commerce with copies of laws outside of Eastern Europe.

John and I met and I asked him who it was that requested that a legal specialist on BITs be sent to Lithuania. Miskinis, the Deputy Minister in charge of the BITs, apparently does not expect to have more than a social relationship with me and Sigute will be gone for most of my stay. It turns out that Virginius Papirtas, the Deputy Minister for Political Affairs, had requested the BIT specialist.

Thursday, July 1: This morning I analyzed Lithuania's BITs with Poland, Switzerland and the United Kingdom. In the afternoon,

I compared the existing treaties with each other and with Lithuania's Constitution and foreign investment laws to determine whether there appear to be any inconsistencies among the treaties or conflicts between the treaties and Lithuanian law.

Friday, July 2: In the morning, I attended a meeting at the Commercial Law Center to plan for the impending CEELI Executive Board meeting in Vilnius. John has put together a very impressive operation.

Later in the morning, Sigute took me to meet Deputy Minister Papirtas. I was hoping for a discussion of what he wanted my visit to accomplish since he was the instigator, but it turned out that he was very pressed for time and so our meeting was little more than an introduction that lasted a few moments. He promised that we would have an extended discussion in the near future.

Sigute provided me with a copy of the proposed U.S. BIT along with Lithuania's proposed changes, which I began to review. She also told me that Lithuania was preparing its own model BIT. We agreed that she would provide me with a copy as soon as it was translated into English.

At the end of the day, Sigute told me that she had arranged for me to meet with Miskinis on July 8 to discuss the U.S. negotiations. It appears that Miskinis will chair the Lithuanian delegation. Sigute will not be further involved in those negotiations.

Lina gave me copies of 12 BITs (in addition to that with the United States) that have been proposed to Lithuania for negotiations.

Saturday, July 3: I completed my review of Lithuania's numerous proposed changes to the U.S. draft. With respect to each Lithuanian objection, I prepared either proposed language to address the concern or an explanation of why the concern should be put aside or why I believed the United States should accede to the Lithuanian position. Some of Lithuania's concerns are based on unfamiliarity with the terminology or with relevant U.S. law.

In the afteroon, I drafted a memorandum to the MFA containing my analysis of the 8 existing Lithuanian BITs. The memorandum identifies several problems raised by these agreements and proposes some solutions.

Later in the afternoon, I had an extended discussion with Jurate Zabielaite. I mentioned to her the problems that I had found with the agreements and she explained the reasons for some of the more unusual features found in the agreements. She is knowledgeable and sophisticated about the BITs. It is too bad that she no longer is involved in the BIT program. In the course of our discussion, she mentioned that Lithuania has a BIT with Germany. This was news to me. Sigute did not provide me with a copy of that BIT, but Jurate is certain that one exists.

Monday and Tuesday, July 5-6: Ministry closed for holidays.

Wednesday, July 7: Lina confirmed that a German BIT exists. She said that I was not told about it or given a copy because it is in German, which I do not read or speak.

I spent most of the day translating the German BIT. Because I brought with me copies of a large number of German BITs in English and other languages, by a laborious process of comparing provisions I was able to develop a glossary of German legal terms used in the BITs, which in turn enabled me to translate Lithuania's BIT with Germany. I am fairly confident that I have the substance of virtually the entire agreement, although I am equally certain that I have missed the nuances.

The remainder of the day consisted of revising my memorandum on the existing BITs to include a discussion of the Germany BIT.

Thursday, July 8: The morning was devoted to a lengthy meeting with Miskinis to discuss Lithuania's negotiations with the United States. The meeting was excellent. We went through the agreement line by line, discussing Lithuania's objections, the likely U.S. response, and what Lithuania's rebuttal should be. I am delighted that the MFA is beginning to focus on the U.S. negotiations and that Miskinis was willing to spend a couple of hours getting his hands dirty with the agreements.

I mentioned to Miskinis that my assisting Lithuania with negotiations against the United States could be perceived as creating a conflict of interest. We agreed that I should not be a member of the Lithuanian delegation, but that I could attend the negotiations as an observer.

I also gave Miskinis an oral summary of my analysis of the 9 existing BITs. We discussed some of the problems and my proposed solutions. On the spur of the moment, I decided not to give Miskinis the memo that I had prepared. Because I keep discovering that information which I have been given is either wrong or incomplete, I was a little worried that some of what is the memo may be based on bad information. If the memo still looks correct when I see him next, I will give it to him then.

Miskinis ended the meeting by asking when the negotiating manual would be completed. He said that he was anxious to see it.

At the beginning of the meeting, a young man had entered the room without an introduction. As soon as it ended, he departed without saying a word. After leaving Miskinis, I chased after the young man and introduced myself. His name is Audrius Navikas, an economist with the MFA. He is not sure whether he will be on the negotiating team with the United States, but apparently is generally involved in the Lithuanian BIT program. I told Audrius that I would like to discuss the BITs with him further sometime and he seemed receptive.

In the afternoon, I attended and made a brief presentation at the A.I.D. Coordination Meeting.

Friday, July 9: I attended the CEELI Executive Board meeting the entire day.

Saturday, July 10: I accompanied the CEELI Executive Board on its trip to Kaunas.

Mark Ellis, Homer Moyer and Sandy D'Alemberte each expressed to me their concern that my involvement in negotiations with the United States could be perceived as creating a conflict of interest. I told them that I had raised the same problem with Miskinis and that we had discussed my attending the negotiations as an observer rather than a member of the Lithuanian delegation. After several discussions spread over the day, we agreed that, on Monday, I should contact the U.S. delegation and ask for its approval of my presence at the negotiations. We also agreed that, if that approval was not forthcoming, I should not attend the negotiations.

Sunday, July 11: This evening, John and Maria Zerr hosted a pizza party for the Commercial Law Center staff. At the party, Algis told me that over the weekend a cable from Washington had come in concerning my involvement in the BIT negotiations. His father has the cable.

Monday, July 12: Most of the day was spent drafting the negotiating manual.

After a couple of attempts, I finally reached Al Rimas at the Embassy. He told me that the cable from Washington stated that the U.S. negotiating team would not negotiate with Lithuania if I was present in the room. He said that the U.S. delegation does not object to my providing assistance to Lithuania on the BITs generally or on the U.S. BIT in particular, but is adamant that I cannot be present in the room during negotiations. He said that he already had communicated the U.S. demand to Miskinis and that Miskinis seemed prepared to comply.

Tuesday, July 13: In the morning, I wrote a short memo to Miskinis about the cable from Washington. I suggested that the U.S. government had no right to dictate to the Lithuanian government the composition of its delegation. On the other hand, we already had agreed that I was not going to be part of the Lithuanian delegation in any event and thus the only real significance of the U.S. cable was that the U.S. delegation did not want me in the room as a silent observer either. I suggested that I still could participate by sitting in a room adjacent to the negotiating room and conferring with the Lithuanian delegation outside the presence of the U.S. delegation as often as necessary. I requested that we meet to decide how to proceed and then returned to working on the negotiating manual.

Later in the day, Audrius found me and said that his boss, Dalia Grybauskaite, would like to discuss the BIT negotiations with me. We went to her office, where she was holding my memo to Miskinis. She said that no one in the MFA had ever heard of one government dictating to another government the composition of its delegation. She said that the Lithuanian government was not happy with the U.S. demand but that Lithuania did not wish to let the

negotiations become sidetracked on a procedural issue. Accordingly, Lithuania was prepared to accede to the demand. We agreed that I would remain in my office during the U.S. negotiations and that someone would be sent to get my advice as the need arose.

I asked Grybauskaite if Miskinis still intended to chair the delegation and she said that she would be the chair instead. She then handed me a copy of Lithuania's latest position paper on the U.S. BIT. She said that it had been revised in light of my discussion with Miskinis. Lithuania has abandoned several of its objections now that it understands the text better. We went over the new position paper together and I gave her an item by item analysis of each of Lithuania's points, similar to what I had done with Miskinis.

At the end of the meeting, I gently asked Grybauskaite whether she had any prior experience with the BITs. She said that she was at the MIER when it was doing the BIT negotiations. I asked whether she probably would continue to be involved in the BIT program and, not understanding my question, she repeated that she would be chairing the negotiations with the U.S. I asked whether she thought she still would be involved in six months. She smiled grimly and said, "In six months, nobody knows what ministries or what ministers will be involved." She then indicated that, at least for the immediate future, she would continue to work on the BITs. She expressed concern about the lack of materials on investment law in the MFA and asked me to provide a list of books that the MFA should have. She said she would house the books in her office.

In the afternoon, Jurate came by to ask for my assistance in preparing for the intellectual property negotiations. She gave me a copy of the U.S. draft agreement and said that she would like me to attend a meeting with the Lithuanian delegation at 10 a.m. the next morning.

In the evening, I compared the U.S. draft with the intellectual property code produced by the Uruguay Round and with the intellectual property provisions of the NAFTA. I made a list of suggested changes to the U.S. draft.

Wednesday, July 14: I was stood up for the 10 a.m. meeting. Jurate never came for me.

I spent most of the day working on the negotiating manual.

Later when I saw Jurate, I asked what happened to the meeting. It turned out that she had called one of Sigute's staff attorneys, who was supposed to attend the meeting, and asked him to bring me. He never came by to get me and, at the meeting, simply said that he would brief me later. Jurate is not sure why he did not do as she asked.

Jurate then asked for my comments on the intellectual property agreement. I went through it and explained my suggestions. She also asked some questions about how the Vienna Convention on the Law of Treaties would apply to this agreement.

Jurate and I also discussed the existing Lithuanian BITs. When I mentioned that I was alarmed about the failure to include an

escape clause for balance of payment difficulties in some of the BITs, she said that it was included in a separate exchange of notes. The material Sigute gave me, however, included no such exchange of notes for several of the BITs. Jurate said that, at the time the MIER was dissolved, she had offered all of her files to the MFA, but that the MFA officials had said that they were not interested in the MIER files. Accordingly, the MIER files had been sent to the archives. Jurate said that it was entirely possible that the MFA did not realize that there were additional exchanges of notes and did not have copies of them.

After my meeting with Jurate, I asked one of the MFA attorneys to double check the treaty files for the missing exchanges of notes.

Thursday, July 15: Most of the day was spent drafting the negotiating manual.

In the morning, I tried to talk with Gintaras Pukas, the former MIER Deputy Minister, about Lithuania's existing BITs to get his thoughts about some of the anomalies in them that I had found. It was a largely futile effort, however. He obviously is bitter and angry about the dissolution of his ministry and the failure of the MFA to seek his advice or assistance or even to take custody of the files. He kept declining to discuss the substance of the agreements, continually steering the conversation back to the arrogance or indolence of the MFA.

In the afternoon, I dropped in on Grybauskaite to discuss a concern I had about the applicability of the U.S. BIT to expropriation claims arising during the Soviet occupation. I suggested that Lithuania include language to foreclose this possibility. Her initial response was that no language was necessary because the agreement could not possibly be so construed. After a brief discussion, she agreed that it would be prudent to insert my proposed language. Her problem is her own certainty about her knowledge. She thinks that because she does not read the BIT a certain way, no one else could either. I explained that the goal was not simply to win a dispute with an investor expropriated by the Soviets, but to prevent the dispute from even arising.

The MFA lawyer brought me the exchanges of notes I had asked for the previous day on a balance of payments exception. When I read them this evening, however, they turned out to be the instruments of ratification. Meanwhile, he has left on vacation and will not be back until after my departure.

Friday, July 16: Nearly the entire day was spent drafting the negotiating manual.

In the afternoon, Jurate brought by the head of the Lithuanian delegation for the intellectual property negotiations with the United States. She said that he was interested in my proposed changes and wanted to discuss them with me personally.

Sunday, July 18: John Zerr told me today that, according to Jurate, Deputy Ministers Miskinis and Papirtas both have been

fired. No one knows who will replace them.

I spoke with John about Grybauskaite's request for the list of books. We agreed that any books acquired should be kept in the Commercial Law Center.

Monday, July 19: Today the U.S. delegation arrived for BIT, intellectual property, and trade negotiations. It was a 3 ring circus, with separate negotiations on each agreement going on simultaneously in different rooms.

I spent the day in my office beginning my analysis of the 12 proposed BITs, so that I would be available in case the Lithuanian delegation needed help. Audrius showed up after a few hours, gave me a progress report, and asked for advice on several issues. He then returned to the negotiations.

In the evening, Al Rimas hosted a reception for the U.S. and Lithuanian delegations. I jumped all over the U.S. BIT delegation about my exclusion from the room. It began when Al greeted me at the door and said, "It was a fascinating negotiation, Ken. You really should have been there." I replied that he was absolutely correct and that it was his department that was responsible for my not being there. As a practiced diplomat, Al smiled and changed the subject. Later, when I met the head of the U.S. delegation, Mary Rychman from U.S.T.R., she noted that the Lithuanians did not understand BIT negotiations very well and asked that I give them as much help as I could. I pointed out that the U.S. Government had spent several thousand dollars sending me to Lithuania for just that purpose, but that the major impediment was her cable barring me from the negotiations. I also noted that, whatever objections might exist with respect to my assisting Lithuania were present whether I was in the room or not. By excluding me from the room, they had not cured any potential problem. What they had done, however, was to make it impossible for me to observe the Lithuanian delegation in action and to identify in what areas additional explanation and training were needed. Mary said that the cable was just standard operating procedure, that similar cables were sent prior to all BIT negotiations and that she had not even been aware that I was in Lithuania. I replied that, as of 1988 when I left the State Department, no such cable ever had been sent in the history of the BIT program so that it must be a relatively new "standard" procedure. I also noted that no such cable had preceded the last negotiating round in Vilnius. Mary replied that the last round had not been considered "formal" negotiations. I commented finally that the State Department attorney I had consulted before coming to Vilnius did not think there was any problem with my presence here. Mary ended the discussion by saying that she would not have sent the cable had she known all of the facts and that the State Department officials who knew I was in Lithuania should have argued more strenuously on my behalf at the time the cable was cleared. I believe that U.S.T.R. was unhappy with George Blow's role in the last round of negotiations and sent the cable to prevent a recurrence.

Tuesday, July 20: Most of the day was spent continuing to analyze the 12 treaties proposed for negotiation but not yet concluded.

The U.S. delegation departed without concluding the BIT.

Disaster struck. At the end of the day, I turned on the computer to print out the first draft of the negotiating manual and the entire file had been deleted. No one knows how. Three weeks of work banished to an ethereal black hole.

Wednesday, July 21: Sigute returned from vacation looking harried, but saying that we should talk later. I began to pepper her with questions. She confirmed that Miskinis and Papirtas were leaving. She was not sure when, but believed that their last day would be Tuesday, July 27. She did not know to whom she would report in their absence or who would replace them. Following up on my conversation with Grybauskaite, I asked Sigute about the condition of the MFA's law library. Although the MFA apparently has very little material, the only book she could think of that she would like to have is a particular commentary on the Vienna Convention on the Law of Treaties, the name and author of which she had forgotten. I told her about the law library at the Commercial Law Center and suggested that this book would make a good acquisition, given the growing importance of treaties in international commercial law.

A little perturbed that Grybauskaite did not report on the final results of the negotiations, I went to see her. Neither she nor her secretary was in.

Most of the day was spent working anew on the negotiating manual. I have picked up where I left off, hoping that a computer technician can recover the missing material.

Thursday, July 22: This morning I had a long conversation with John Zerr about the status of my work at the MFA. Afterwards, I dropped in on Grybauskaite, but she was in a meeting. During my only sighting of Sigute, she rushed by in the hallway saying that she was much too busy.

I returned to work on the negotiating manual for much of the day. I refuse to work any longer on the computer that erased my document, and no one else seems to want to either. Accordingly, there are four of us taking turns on the one remaining terminal. Progress is very slow.

In the late afternoon, the Commercial Law Center had a going away party for CEELI Legal Specialist Bill Walters, who has been in Lithuania for six months. At the end of the day, the computer technician announced that my document was irretrievably lost. No one knows how it happened, but it is a real tragedy. With exactly two weeks remaining, I've decided to put aside my plans to do the comparative analysis of the Foreign Investment Law so that I can devote the rest of my time to finishing the manual, which to a large extent includes recreating the lost material.

Friday, July 23: Sharing the terminal was not working. I

decided to come in over the weekend when I will have it to myself.

Saturday, July 24: The day was spent working on the negotiating manual.

Sunday, July 25: The day was spent working on the negotiating manual.

Monday, July 26: This morning, John Zerr and I gave a progress report to John Cloutier at A.I.D. It was intended as an interim report, but, given that I have only 10 days left in country with no major events planned other than completion of the manual, all agreed that it would serve as an exit interview.

Later, I got from Audrius an oral report on the outcome of the U.S. negotiations. He promised me a copy of his written report when it was ready.

Sigute came to my office to apologize for her inattention to investment treaties during my time in Lithuania. We agreed to have an extended meeting on Tuesday to talk about the agreements.

Most of the day was spent on the negotiating manual.

Tuesday, July 27: Sigute and I spent the morning discussing the BITs. At the end of our session, she noted that we never had the interagency meeting that I had proposed during my first meeting with Miskinis. She said that she would try to arrange such a meeting before I left.

Audrius brought the written report on the U.S. negotiations. His assessment, seemingly confirmed by the number of issues still outstanding, was that very little progress was made in the negotiations. Virtually none of the issues raised by the Lithuanian delegation at the start of the negotiations were resolved. Miskinis and I had resolved several problems during our lengthy discussion prior to the arrival of the U.S. delegation, but there was very little progress beyond that point. The language that I had suggested to Grybauskaite regarding Soviet expropriations was proposed by her and accepted by the U.S. delegation. The American and Lithuanian delegations will continue to negotiate through embassy channels.

The afternoon was spent on the negotiating manual.

Wednesday, July 28: Jurate came by and we discussed the reasons for the departure of Miskinis and Papirtas, yesterday having been their last day. Papirtas is a former official at Vilnius University who was arrested for selling degrees and jailed pending trial. His trial ended in a conviction and he was sentenced to time served. After his release at the end of the trial, he appealed and the conviction was reversed. Although all this happened before his appointment to the Ministry, the newspapers had started running stories about it and these stories are being blamed for his ouster. None of this, however, explains Miskinis' departure. The fact that both were fired at the same time suggests that the Minister believes the Ministry is being

poorly run and wants to start over. There is a third deputy minister, in charge of administration, who Jurate says also has been fired, although he is still in office. If he is on the way out, that lends credence to the theory that this is a general housecleaning.

The rest of the day was spent on the negotiating manual.

Thursday, July 29: I finally received a copy of the English translation of Lithuania's proposed model BIT. In all prior negotiations, Lithuania has been given a model agreement by a developed country and negotiations have centered around Lithuania's proposed changes to that model. Lithuania wishes to have its own model agreement. Although the English version is considered a "translation" of the Lithuanian original, in fact all negotiations will be based on the English version.

Sigute confirmed that we would be having a meeting of Lithuanian officials involved in the BIT program on Monday, August 2. She suggested that I may want to use the opportunity to critique Lithuania's proposed model as well as to offer any other general comments about the BIT. I mentioned that, because I have not worked with many of the invitees, I was uncertain about their level of expertise and hoped that they would come with specific topics they wished to discuss.

I took part of the afternoon off and then worked on the negotiating manual in the evening.

Friday, July 30: The day was spent working on the negotiating manual.

Sunday, August 1: This morning I reviewed Lithuania's proposed model BIT. Much of the agreement is a cut and paste arrangement of provisions taken from other agreements that they already have signed or are in the process of negotiating. I can hardly be critical of this approach since the U.S. model is also in many respects based on various European BITs available in the late 1970s. The problem is that these other agreements were negotiated in English, and then translated into Lithuanian. The Ministry lawyers, rather than working with the English originals, have stitched together provisions from the various Lithuanian translations and then translated the final product back into English. The result is that some of the provisions read poorly.

A second problem with the Lithuanian model agreement is that the Lithuanians have not always chosen wisely among the variations of a particular clause found in other BITs. I will be anxious to talk with Sigute and the others about the reasons for some of their choices.

A third problem is unfamiliarity with the terminology. The Lithuanians sometimes have avoided formulations that are considered favorable to investment, while extending in substance the very protection generally afforded by such language. If they are prepared to yield on the substantive point, they might as well reap the public relations benefits of using the standard language.

Otherwise, it looks as if they are trying to avoid offering protections to investors that they apparently are perfectly willing to provide and, in fact, do provide.

After completing my review of the model BIT, I made some notes for my presentation on Monday.

I spent the afternoon working on the negotiating manual.

Monday, August 2: The morning was spent on the negotiating manual. In the afternoon, we had our meeting at the MFA of the officials involved in the BIT program. Just as the meeting was about to start, Sigute rushed in, apologized, and said that she could not attend because she had been asked to brief the Minister on a free trade agreement due to be signed with the Ukraine on Wednesday. Grybauskaite also did not attend. About a dozen other officials were there, however. Most were economists and a few were lawyers. Audrius did the introductions and took the lead in posing questions. After the meeting, I returned to the negotiating manual, finally finishing it sometime around 2 a.m.

Tuesday, August 3: This morning, John, Alina and I printed out the manual, proofread it, made corrections, copied it and bound it. At 12:20 p.m., the manual was completed. It is 96 single-spaced pages in length (plus a table of contents) and includes a clause-by-clause discussion of the typical BIT, an identification of the main variations in each clause that appear among BIT programs, a discussion of the advantages and disadvantages of each variation, a summary of how Lithuania has dealt with each of these clauses in its first 9 BITs, and an analysis of the 13 BITs proposed for negotiation in the future, including recommended changes in those proposed BITs.

At 12:30 p.m., John Zerr, John Cloutier and I met with Prime Minister Adolfas Slezevicius to present him with the negotiating manual. John also used the opportunity to present the Prime Minister with copies of a couple of CEELI legislative analyses and to discuss the future of the Commercial Law Center.

In the afternoon, Sigute and I had a long meeting to discuss Lithuania's proposed model BIT. The meeting went extremely well. I gave her a marked up copy of the model which included all of my suggested changes. Some were improvements in the English, which she adopted without question. Others were changes to make the language appear as favorable in form as the agreement already was in substance. Sigute explained that they wanted the agreement to be a pro-investment agreement, within certain limitations, but simply had been uncertain as to which of several formulations would be considered by investors to be more favorable. These problems all were resolved. We also discussed some changes in their policy that I recommended. In a couple of instances, these were agreed to immediately. In a couple of other instances, she took my suggestions under advisement. Sigute was scheduled to be in the Ukraine on Wednesday, so we said our farewells at the end of the meeting.

Wednesday, August 4: Today was spend saying good-bye to people, packing and beginning to type my notes for this report.

Thursday, August 5: Return to San Diego. The suitcase containing my notes for this report and all of my work product from the trip was lost by the airline. P.S. The suitcase was recovered

BILATERAL INVESTMENT TREATY NEGOTIATING MANUAL

BILATERAL INVESTMENT TREATY

NEGOTIATING MANUAL

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PREFACE

This negotiating manual was prepared to assist Lithuanian government officials in negotiating bilateral investment treaties (BITs). More specifically, it contains

-- an explanation of the provisions generally found in a BIT;

-- a discussion of the approach Lithuania has used with respect to each of these provisions in the BITs it has concluded as of July 31, 1993; and

-- an analysis of twelve BITs proposed to Lithuania for negotiations, including the identification of language in these BITs that is inconsistent with Lithuania's prior treaty practice or current law or that requires modification for other reasons.

It sometimes is assumed with respect to BIT negotiations that capital importing countries, which usually conclude a BIT principally to attract foreign investment, generally seek to minimize the concessions they must make to reach agreement, while capital exporting countries generally seek the strongest possible treaty. While there may elements of truth in this assumption, it greatly oversimplifies a more complex reality.

There are at least three reasons why it is difficult to generalize about whether a particular state will or should seek a strong or weak version of a BIT. First, capital importing states sometimes seek a strong version of a BIT because they believe that the deep commitment to investment protection represented by a strong treaty is more likely to attract foreign investment than a more shallow commitment. Second, some capital exporting states have political or economic policies that preclude them from providing certain types of protection to foreign investment in their own territories and thus from insisting on such protection for their investment in the territory of other states. Third, many states both export and import capital in large quantities and thus must adopt a BIT negotiating stance that takes into account the competing considerations relevant to their dual capacity as major capital exporting and importing states.

For these reasons, this analysis has not assumed that Lithuania should seek either a strong or weak version of the BITs. Its current political and economic policies may require treaties that are strong in some respects and weaker in others. Further, most of these agreements will apply to investment for a minimum of 20 to 40 years. Although the present impetus for negotiating the treaties may be to attract foreign investment, Lithuania can look forward to the day within the life of these treaties when it will have substantial investments in the territories of its treaty partners and thus will want treaty provisions in place that ensure the security and competitive position of those investments.

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PART ONE

THE CONCEPT OF A BILATERAL INVESTMENT TREATY

This part analyzes the provisions that commonly appear in most Bilateral Investment Treaties (BITs). It describes the purpose of these provisions, identifies the principal formulations in which each provision appears, discusses the advantages and disadvantages of the various formulations and summarizes how each provision appears in the nine BITs concluded by Lithuania as of July 31, 1993. These nine BITs are those with Denmark, Finland, France, Germany, Norway, Poland, Sweden, Switzerland and the United Kingdom.

Twelve BITs proposed to Lithuania for negotiation are analyzed in Part Two. Although the BIT with the United States has not yet been signed, it also is discussed in this part because potentially successful negotiations were underway at the time the preparation of this manual was commenced and because the U.S. BITs include several significant provisions not yet included in any prior Lithuanian BIT.

It should be noted that, for purposes of the analysis of Lithuania's nine concluded BITs, the English version of the treaties was used except in the case of the France and Germany BITs, for which English translations were unavailable. The analysis of these two treaties thus was based on the author's translation into English of the French and German texts, respectively. Because of the author's lack of formal training in German, the reader is cautioned to review carefully the original agreement in Lithuanian or German before relying on the analysis of the Germany BIT.

I. SCOPE OF TREATY COVERAGE

Most BITs begin with an article containing definitions. The importance of these definitions is that they determine the types of investment that will be protected by the treaty.

BITs generally protect the investment of investors of one party in the territory of the other party. The key terms, then, are investment, investor and, to a much lesser extent, territory.

A. Investment and Returns

1. Defining Investment

Most BITs define the term "investment" very broadly. The most

common definition is "every kind of asset." This definition appears in Lithuania's BITs with Sweden, Denmark, Finland, Norway, Switzerland, the United Kingdom and Germany. The Poland BIT defines investment as "any kind of assets."

The U.S. BITs define investment as "every kind of investment." Although the U.S. definition can be criticized as circular, the United States preferred this definition over "every kind of asset" becaused it believed that the word "asset" might not be broad enough.

The treaties usually also list examples of assets that are included within the definition. The list typically is not exhaustive, but is intended merely to illustrate the variety of economic interests that are protected by the treaty.

One of the assets frequently listed is interests in companies. Interests in companies in some treaties may include not only equity interests, such as shares of stock, but also debt interests. For example, if Lithuania were to expropriate a company established under Lithuanian law, but 50% owned by a British investor, the British investor could claim that his investment in the Lithuanian company had been expropriated and could seek the protection of the treaty. If that same company had been financed by an American bank, assuming that the U.S.-Lithuania BIT defined investment to include debt interests in a company, the American bank could claim that its investment had been expropriated and seek the protection of the U.S. treaty.

Another asset frequently listed is licenses, permits and concessions. If Lithuania were to grant a German company a concession to drill for petroleum and then were to revoke the concession, that could be construed as an expropriation of the German investment. Although the host state was not required initially to grant the permit, license or concession, once it does so the privilege is protected as investment against government interference or deprivation.

2. Defining Returns

Some BITs provide explicit protections to returns on investment. For example, they may provide that an investor has the right to freely transfer returns into a convertible currency. BITs that provide such explicit protection typically contain a definition of the term "returns."

The most common definition is "amounts yielded by an investment." This definition appears in Lithuania's BITs with Germany, Denmark, Finland, Norway, Poland and the United Kingdom. The BIT with France defines returns as "all products of an investment." Most BITs that define the term also include a nonexhaustive list of monetary flows that shall be considered returns. The list typically includes profit, interest, capital gains, dividends, royalties and fees. This list

with minor variation appears in Lithuania's BITs with Denmark, Finland, Norway, Poland and the United Kingdom.

3. Application of the BIT to Existing Investment

An issue that sometimes arises in negotiations is whether to apply the treaty to investment that was in existence before the treaty enters into force. That is, does the term investment include previously-existing investment?

Frequently, developing countries do not wish to include previously-existing investment because they believe that to do so would grant a windfall to the owners of such investment. Developing countries will note that the investors were willing to come to the country without the benefit of the treaty and may even have been given special concessions to induce them to come and thus there is no reason now to given them the benefit of the treaty.

Developed countries often insist on applying the treaty to previously-existing investment, for a variety of reasons. First, applying the treaty only to new investment may give later investors a competitive advantage over earlier investors. Conferring an advantage on one group of investors distorts the operation of the market, which is contrary to the entire philosophy of the BIT program. Second, developed countries will point out that limiting the treaty to new investors in some sense punishes those investors who demonstrated some faith in or commitment to the host state before there was a treaty, while rewarding those who delayed investing until the treaty was in place. Third, if a treaty does appear to favor new investors over old investors, then it may be opposed by the existing investors. If existing investors are opposed to a treaty, the treaty may have more difficulty getting legislative approval in the developed country. Fourth, conclusion of a BIT is supposed to represent a genuine pro-investment policy by the signatory states. If a state truly wishes to promote and protect foreign investment, the developed country will argue, then it should not object to extending treaty protection to previously-existing investment.

Usually, the developed countries prevail in this debate and most BITs protect previously-existing investment. Exceptions do exist, however, in special circumstances. For example, some BITs involving newly independent states exclude investment that predates their independence.

Lithuania's practice in this regard has not been consistent. Two of its treaties, those with Switzerland and the United Kingdom, provide that they apply to all investment made in accordance with its laws and regulations prior to the treaty's entry into force. Thus, all Swiss and British investment in Lithuania is protected unless it was made illegally. The U.S. BITs provide simply that they apply

to all existing investment.

Three of the treaties, those with Germany, Denmark and France, apply to investment made before December 29, 1990, the date on which Lithuania enacted its Foreign Investment Law, provided that the investment is registered in accordance with Lithuanian law. Assuming that registration is a mere formality, Germany, Danish and French investment made prior to December 29, 1990, presumably will achieve full treaty protection without further agreement between the treaty parties.

Two of the treaties, those with Sweden and Finland, provide that the treaty applies to investment made before December 29, 1990, the date on which Lithuania enacted its Foreign Investment Law only if the parties specifically agree. That is, unless Lithuania gives some further consent, the treaty will apply only to Swedish and Finnish investment made after December 29, 1990.

Finally, two of the treaties, those with Norway and Poland, apply only to investment made after December 29, 1990, and accepted by Lithuania in accordance with its laws. Thus, Lithuania is not obligated to apply the treaty to existing Norwegian Polish investment.

For Lithuania, application of the BIT to existing investment raises a special problem. Lithuania obviously does not wish to be responsible for compensating western investors for Soviet expropriations in Lithuanian territory during the time of Soviet occupation. One way to avoid any possibility of this occurring is simply to insert language in the treaty stating that it does not apply to investment made before the treaty enters into force.

Some states, however, may not be willing to exclude all previously existing investment. And, in fact, avoiding the objectionable result described above does not require that previously-existing investment be excluded from treaty protection. All it requires is that the treaty not be applied to events that occurred prior to the treaty's entry into force.

Under the Vienna Convention on the Law of Treaties, the general rule is that treaties do not apply to events that occur or situations that exist prior to their entry into force. Thus, none of the treaties concluded by Lithuania thus far should be interpreted to apply to Soviet expropriations in Lithuanian territory prior to independence. If Lithuania wanted to be absolutely certain that this result would occur, it should put into future treaties language stating that the treaty does not apply to events which occurred prior to the treaty's entry into force. Because such language is consistent with the Vienna Convention on the Law of Treaties, states should not object to it. Alternatively, Lithuania could insert narrower language providing that the treaty does not apply to claims that arose prior to the treaty's entry into force. The U.S. has agreed to inclusion of such language in its BIT with

Lithuania.

B. Investors

The term "investors" usually includes nationals and companies. In some treaties, such as the U.K. and U.S. BITs, the word "investor" is omitted entirely and the treaties state simply that they apply to investment of nationals and companies of one party in the territory of the other party.

1. Nationals

The word "national" in many countries means the same thing as citizen. Most BITs define a national of a party as a natural person recognized by that party's own internal law as a national. Thus, all persons considered Lithuanian nationals under Lithuanian law would be nationals of Lithuania within the meaning of the treaty.

All of the Lithuanian BITs concluded thus far adopt this approach, with two exceptions. The treaties with Norway and Germany provide that, for Lithuania, investors are those who are "citizens" under Lithuanian law. The Germany BIT also provides that any person in possession of a passport issued by a party shall be deemed a national of that party. Because the word "citizen" is used in Lithuania's citizenship law and the word "national" apparently is not, using the word "citizen" probably is preferable.

The definition of nationals usually raises no problems in negotiations. Under international law, each state may decide for itself whom to consider its nationals, although other states may not recognize the nationality if there is no genuine link between the individual and the state of supposed nationality. It could raise objections if Lithuania wished to include in its definition of nationals persons whom it did not consider nationals or citizens under its own law. Objections would arise because, under international law, a state generally has no right to assert a claim on behalf of a person that it does not consder its own national. Thus, while Lithuania has broad discretion to decide under what circumstances a person will be considered a citizen or national of Lithuania, if it does not confer that status on a person, then some states may object to extending treaty protection to investment owned by such a person.

2. Companies

The term "investor" embraces juridical entities or legal persons, as well as natural persons. In some treaties, these entities are referred to collectively as

companies and that term will be used here. The protected entities usually comprise not only corporations, but partnerships and other forms of enterprise. Many treaties specify that a company is included regardless of whether it is organized for profit or has limited liability.

The principal issue that arises with respect to these entities is how to determine their nationality. Three criteria generally are used either individually or in some combination with each other. These are the place of incorporation, the principal place of business, or the nationality of those who own or control the company.

The advantage of using the place of incorporation is that it is easy to determine. Many large corporations are owned by people of many nationalities, thus making it difficult to ascertain which nationality should be considered dominant for purposes of determing the nationality of the company. Basing nationality on ownership means that the nationality of a company may change every time a large block of stock is sold. Since under international law a claim generally must have been owned by nationals or companies of the same state from the date the claim arose until the date it is settled, changes in the nationality of the company after a claim arose but before it was resolved could mean that no state would be entitled to assert a claim on behalf of that particular company. Using the place of incorporation brings stability and certainty to the process of determining corporate nationality. In addition, the International Court of Justice held in the Case Concerning Barcelona Traction, Light and Power Company, Ltd., that, in the absence of a treaty to the contrary, a state could not assert a claim on behalf of a corporation unless the corporation was constituted under its laws. Thus, using the place of incorporation also is consistent with the decision of the International Court of Justice.

The disadvantage of using a place of incorporation test is that a company may be treated as a company of a state even though none of its owners are nationals of that state and, in fact, the company has no connection with the state at all other than the formality of having been incorporated there. For example, a company incorporated under the law of Beligum may be considered a company of Belgium, even though all of its owners are Canadian and its principal place of business is in Canada.

Further, basing nationality on the place of incorporation may encourage investors to incorporate under the laws of a particular state with which they have no connection, merely to obtain treaty protection. Yet, most governments have no interest in protecting a company incorporated under its laws if none of its citizens own any of the stock. To illustrate, assume that a group of Canadians wished to invest in Zaire, but discovered that Canada had no BIT with Zaire although Belgium did. The Canadians might then form a company under the laws of Belgium in order to obtain the protection of the Belgium-Zaire BIT. If that company

subsequently was expropriated by Zaire, the Belgian government would have very little reason to object, because no Belgian national lost anything through the expropriation, although technically the company would be protected by the treaty and the Belgian government would have the right to object to the expropriation.

Because of this problem, the U.S. treaties generally give to each party the right to deny treaty protection to its own company if nationals of a third country own or control the company. If such a provision were in the Belgium-Zaire BIT, then in the example above Belgium could refuse to extend treaty protection to the Belgian company because it was owned and controlled by nationals of a third country, Canada. Of course, even without such a provision, Belgium could decline to assist the company in its dispute with Zaire. The treaty, however, could give to the company the right to arbitrate its dispute with Zaire even without Belgium's assistance and thus the company would benefit from the treaty.

The advantages and disadvantages of using the nationality of a company's owners as the basis for ascribing nationality are almost the mirror image of those of using the place of incorporation. The company's ownership can be difficult to determine and may change over time. At the same time, a state clearly has a genuine interest in protecting investment owned by its nationals.

Some states prefer to use the principal place of business as the basis for ascribing nationality. The principal place of business may be less certain than the place of incorporation. On the other hand, a company which has its principal place of business in a state may have a more genuine connection with that state than another company which is merely incorporated under its laws. Thus, the principal place of business can be thought of as a compromise between the formalistic place of incorporation test and the potentially unstable and uncertain ownership test.

All of the Lithuania BITs concluded thus far, except one, have used one or more of the three commonly used bases of corporate nationality. The treaties with Denmark and Norway treat a company as a company of a party if it is incorporated under the laws of that party. This is the approach used by the U.S. BITs as well. The treaty with Germany attributes the nationality of a company to the place where it has its principal place of business. The treaties with Sweden and Finland regard a company as a company of a party if the company has its principal place of business in the territory of that party or nationals of that party own or control a predominant interest in the company. The treaties with France, Poland and Switzerland consider a company to be a company of a party if it is constituted under the laws of that party and either has its principal place of business in the territory of the party or is controlled by nationals of that party.

The one treaty that does not use solely these three bases of nationality is the treaty with the United Kingdom. The United Kingdom treaty considers a

company to be British if incorporated under the laws of the United Kingdom, but considers a company to be Lithuanian if "registered" in Lithuania. Some states may resist using a place of registration test because it would permit a company incorporated under the laws of a third state, owned by nationals of a third state, and having its management and production facilities in a third state to claim Lithuanian nationality merely by registering in Lithuania. Further, widespread use of this test would result in companies' having many different nationalities, which could mean that one company would be able to claim the protection of numerous treaties with conflicting provisions.

C. The Relationship Between Investors and Investment

Most BITs do not address in detail what relationship the investor must have to the investment for the investment to be protected. Most commonly, they provide that investment "of" investors of one party in the territory of the other party shall receive protection under the treaty.

The question arises as to how direct the connection between the investor and the investment must be. It is obvious that, if Norwegian nationals establish a corporation in Lithuania, that corporation is an investment of the Norwegian nationals in the territory of Lithuania. If Norwegian, Swedish and Danish nationals each own one third of the shares of a corporation in Lithuania, the shares of these nationals would be investment in the territory of Lithuania. Thus, fractional ownership does not necessarily mean the investment is no longer the investment of the Norwegian nationals.

It is easy, however, to imagine situations where the relationship between the investor and the investment is more attenuated because of additional corporate layers between the investor and the investment. For example, Norwegian investors may own a corporation in Spain, which then makes an investment in Lithuania. The investment in Lithuania is directly owned by the Spanish corporation, but ultimately it is owned by the Norwegian investors. Intuitively, it seems apparent that the investment could be considered investment of the Norwegian nationals because they are the ultimate beneficial owners. The same would be true even if there were more corporate layers between the investor and the investment. For example, the Norweign investors may own a Spanish corporation, which has a wholly-owned subsidiary in Austria that makes an investment in Lithuania. Although there are more layers between the investor and the investment, the Norwegian investors continue to be the ultimate beneficial owners of the entire investment.

A still more attenuated relationship exists where more layers exist and the ownership is fractional rather than whole. For example, the Norwegian investors

may own 30 percent of the stock in a Spanish corporation, which owns 10 percent of the stock in an Austrian company that makes an investment in Lithuania. The question arises whether this investment is investment "of" the Norwegian nationals.

Most BITs do not address these questions explicitly. The U.S. BITs and the proposed BIT with Kuwait do include at least some language that suggests that the existence of corporate layers between the investor and the investment and the fact of fractional ownership do not necessarily mean that investment no longer is protected by the treaty. The U.S. BITs define "investment" as "every kind of investment in the territory of one Party owned or controlled directly or indirectly by nationals or companies of the other Party. . . ." The terms "directly or indirectly" indicate that the investment may be owned through corporate layers and still be protected. The terms "owned or controlled" indicate that the investment need not be wholly owned by the investors, as long as they can claim ownership or control of the investment. The Kuwait BIT is discussed in Part Two.

D. Territory

Investment of nationals or companies of a party is protected only if it is in the territory of the other party. There are problems with defining the word "territory." A specific listing of regions covered is undesirable because boundaries sometimes change or are in dispute. For this reason, some BITs do not include a definition of territory. The U.S. BITs, for example, generally do not define territory.

One approach to this term defines the territory of a party as the territory falling within its jurisdiction or under its sovereignty. Such definitions do not add very much. In recent years, definitions typically have specified that territory includes the territorial sea and other maritime areas over which the state has sovereign rights under international law, such as the continental shelf and the exclusive economic zone. The effect of including these maritime zones in the definition of territory is to ensure that investment such as offshore petroleum exploration or explotiation are considered investment in the territory of the maritime state.

All of the treaties concluded by Lithuania to date, except that with Germany, define the term "territory." The Finland treaty defines the territory of Lithuania as the "territory which constitutes the Republic of Lithuania." All of the other BITs adopt a definition which includes the martimes areas adjacent to the territory, such as the continental shelf and the exclusive economic zone (EEZ). The Germany BIT does state in its protocol that it applies to the continental shelf and the EEZ.

II. INVESTMENT PROMOTION

Many BITs include some kind of commitment by each party to encourage investment by its nationals and companies in the territory of the other party. Developing countries generally want such provisions included because, for them, the main purpose of the treaty is to promote new foreign investment in their territory and they want to be assured of the assistance and cooperation of the developed party in this regard. At the same time, developed countries are reluctant to make too much of a commitment to promote investment because labor organizations may see investment outflows as reducing employment in their territory. Accordingly, the obligation to promote investment in the territory of the other party usually is qualified.

The treaties concluded by Lithuania are representative of the more common approaches. One approach is to subordinate a party's obligation to promote investment to that party's own policies or laws. The Sweden BIT, for example, requires each party to promote investment in the territory of the other party "subject to its general policy in the field of foreign investment." The U.K. BIT requires each party to encourage investment in the territory of the other party "in conformity with its laws and regulations." The France BIT, which is very similar to that with the United Kingdom, requires encouragement of investment "in accordance with its legislation." These treaties impose very weak obligations since the parties are always free to change their policies or laws.

Another approach is to require each party to promote investment in the territory of the other party "as far as possible." The Denmark and Swiss BITs adopt this approach.

Two BITs concluded by Lithuania do have unqualified obligations to promote foreign investment. The Norway BIT provides that each party "shall promote and encourage" while the Poland BIT provides that each party "shall promote" investment by its nationals and companies in the territory of the other party.

III. ESTABLISHMENT OF INVESTMENT

Probably all states believe that it is their sovereign right to decide whether to permit foreign nationals or companies to establish investment in their territory. They may agree that investment, once established, is entitled under international law to certain protections. But the decision whether to permit the investment in the first place is theirs alone to make.

To some extent, there is an analogy between the transfrontier flow of capital

and that of persons. Probably all states believe that they have the right to exclude an alien for any reason or for no reason at all, although once the alien is admitted, international law regulates the state's treatment of the alien, prohibiting the state, for example, from torturing or murdering him.

Most BITs address the right of foreign nationals and companies of one party to establish investment in the territory of the other party. The right they confer, however, is quite limited.

The BITs concluded by Lithuania are typical in this regard. All of them state that each party shall admit investment of nationals and companies of the other party in accordance with the first party's own laws. These provisions give to nationals and companies of the other party the right to invest, but subordinate that right to the internal laws of the host state. In other words, each state may exclude investment merely by enacting a law prohibiting it. Thus, for example, Lithuania can preclude nationals and companies of the other party from owning land in Lithuania as long as it has a law prohibiting ownership of land by foreign nationals and companies..

These provisions do have some usefulness because they give an investor the right to establish investment until the host state enacts legislation to the contrary. At the same time, however, once the legislation is enacted, it will eradicate the treaty right to establish.

Among the BITs with the strongest right of establishment are those with the United States. They provide that the host state must grant most-favored nation treatment and national treatment with respect to the right to establish investment. That is, nationals and companies of one party must have the same right to invest in the host state as nationals and companies of the host state as well as nationals and companies of any third state.

The right to establish investment under the U.S. treaty is a relative one. That is, U.S. investors do not have an absolute right to establish investment in Lithuania. They have only the same right as Lithuanian nationals and nationals of any third state. Thus, if the establishment of investment in a certain sector is prohibited to nationals or companies of Lithuania and other states, then it may be prohibited to U.S. investors as well, without violating the treaty. It should be noted, however, that the definition of a company in the U.S. treaty is broad enough to include state owned enterprises. Thus, if the establishment of investment in a particular sector is permitted to a state owned enterprise, it must be permitted to U.S. investors, subject to the exception discussed in the next paragraph.

The United States, like other states wishes to reserve some sectors of its economy for its own nationals and thus the U.S. treaties permit exceptions to the

general rule of MFN and national treatment. Specifically, the U.S. treaties call for each party to list certain sectors of its economy in either of two annexes. Sectors listed in the first annex are exempt from the right of national treatment, while those listed in the second annex are exempt from the right of MFN treatment. Thus, if Lithuania wanted to prohibit U.S. investors from acquiring land in Lithuania while allowing Lithuanian investors to do so, it would have to place ownership of real estate in the annex which contains the sectors exempted from national treatment. If Lithuania wanted to prohibit U.S. investors from acquiring land in Lithuania while allowing investors from other countries to so, it would have to place ownership of real estate in the annex which contains the sectors exempted from most favored nation treatment.

IV. MFN AND NATIONAL TREATMENT REQUIREMENTS

Virtually all BITs guarantee most favored nation (MFN) treatment to covered investment. A guarantee of national treatment is less common, but appears in a substantial number of BITs.

The protection affored by these provisions is merely relative. If a host state refuses to grant a particular right to its own nationals or nationals of a third state, then that right will not be obtained through the MFN or national treatment provisions.

A. Reasons for MFN and National Treatment

The theory underlying the BIT is that investment flows should be governed by market forces rather than political considerations. Probably no state consistently applies this theory. As noted above, for example, virtually all states impose some barriers to inward investment in at least some sectors of their economies. Nevertheless, conclusion of a BIT usually represents a general rejection of protectionist policies in favor of a free market policy with respect to foreign investment.

MFN and national treatment requirements are among the most useful mechanisms for combatting protectionism. A national treatment obligation prevents discrimination in favor of a state's own investors while an MFN treatment obligation prevents discrimination in favor of a third state's investors.

The general assumption is that national treatment is better than MFN treatment and, thus, most states regard MFN treatment as a minimum requirement in every case, with national treatment a preferred status to be obtained if possible. In fact, however, some states in at least some respects treat some foreign investors more favorably than domestic investors. Thus, MFN treatment at times will be superior to

national treatment.

Where a treaty guarantees both MFN and national treatment, the investor generally is entitled in each situation to whichever is the more favorable treatment in that situation. Some treaties, such as those with the United States, include an explicit provision to this effect.

Some states are unwilling to grant national treatment to foreign investment and, accordingly, will not seek it from another state. States virtually always insist upon MFN treatment, however, with two exceptions. Many BITs exempt from MFN treatment privileges extended by virtue of its membership in a customs union or free trade area or in the area of taxation..

B. Special Consequences of MFN Requirements

The MFN obligation has the effect of granting to all other BIT partners any concession that a state has made to any one partner. For example, if Lithuania promises national treatment to the investors of only one state, all other states that have the right to MFN treatment in their BITs also must receive national treatment. Because MFN clauses are always present, a state must assume that any promise it makes to one state in a BIT is automatically extended to all other states with which it has a BIT.

The MFN obligation also makes changes in a state's BIT policy very difficult. A state may make concessions in the first one or two BITs that it concludes, in the period when it is relatively inexperienced in BIT negotiations, only to decide that it no longer wishes to make those concessions. Because of the MFN clauses, however, all subsequent BITs in effect will contain the same concession.

There are few solutions to the problem that arises when a state makes a concession in a first treaty that it does not wish to extend to all other states. One solution is to amend the first treaty (or at least to add a protocol) so that the concession is eliminated. Because the other states acquired the concession only through their MFN clauses, after the amendment no state will be entitled to the concession. Obviously, the problem with this approach is that the state which obtained the concession may not be willling to surrender it.

A second solution is to include language in all subsequent treaties stating that the first treaty (or some portion of the first treaty) shall not be considered for purposes of determining the state's obligations under the MFN clause. Sweden, for example, did this in its BIT with Lithuania. Article 3(3) provides that prior agreements between Sweden and the Ivory Coast, Madagascar and Senegal may not be invoked for purposes of establishing Lithuania's rights under the MFN provision.

The problem with this approach is that it will be effective only if every subsequent state agrees to accept treatment less favorable than the first state. If even one state concludes a BIT without the special exclusionary language, then all other states will be entitled to the concession, including those that previously had agreed to the exclusionary language.

C. Analyzing MFN and National Treatment Provisions

The precise wording of a national treatment or MFN clause is important because it determines who or what is entitled to national or MFN treatment and in which situation that entitlement exists. Typically, BITs provide that investment shall receive national or MFN treatment. In many cases, they provide that both investment and the returns from investment shall receive national or MFN treatment. One variation is to guarantee to the investors national or MFN treatment with respect to their right to operate and dispose of the investment.

Generally, the language is crafted in such a way as not to create a right of national and MFN treatment with respect to the establishment of investment. For example, where the right of national or MFN treatment is guaranteed to investment (and returns), then the right takes effect only after the investment is established. Such a clause does not provide any right to establish the investment in the first place. Similarly, where the right of national or MFN treatment is guaranteed to the investor, typically it is only with respect to the operation and disposal of investment and does not extend to the initial establishment of investment.

The reason for this careful crafting is to ensure that states continue to have virtually complete control over the establishment of investment. Because of the way most national and MFN provisions are structured, the state can freely deny to investors of the other party permission to establish investment. Once the investment is established, however, it must receive MFN (and often national) treatment. For example, under this approach, Lithuania could deny national or MFN treatment with respect to the right to acquire real estate. Once Lithuania permitted an investor of a BIT party to acquire real estate, however, that real estate investment would be entitled to MFN and national treatment.

D. Lithuania's BITs

All of the BITs concluded by Lithuania thus far have contained a promise of MFN treatment. In four treaties (with Sweden, Finland, Poland and Switzerland), it is investment which receives MFN treatment. In three treaties (with Denmark, Norway, and the United Kingdom), both investment and returns from investment are guaranteed MFN treatment. These seven treaties clearly do not create

a right to MFN treatment with respect to the establishment of investment. Rather, they protect investment (and returns) after establishment of the investment.

In two treaties (with France and Germany), it is investment and investment related activities that receive MFN treatment. The reference to activities related to investment is vague and arguably could include the right to establish investment since the acquisition of investment could be considered an investment related activity. In the protocol to the Germany BIT, "activity" is defined to include, though not exclusively, the management, maintenance, use and enjoyment of an investment. Although establishment is not expressly excluded, all of these terms are related to post establishment treatment, which supports the conclusion that the reference to investment related activities in the Germany BIT does not include the establishment of investment.

Five of the BITs concluded by Lithuania include a promise of national treatment. In the Switzerland BIT, investment is guaranteed national treatment. In the Denmark and U.K. BITs, the right to national treatment extends to investment and returns from investment. Thus, none of these BITs includes a right of national treatment with respect to the establishment of investment. In the France and Germany BITs, Lithuania has agreed to national treatment with respect to investment and investment-related activities. Again, if investment-related activities include the establishment of investment, then these two treaties include the right to national treatment with respect to the establishment of investment.

Because all of the BITs include a promise of MFN treatment, the four BITs that do not expressly guarantee national treatment nevetheless confer national treatment through the MFN clauses. Note, however, that the national treatment obtained through an MFN clause is only as broad as the MFN clause itself. For example, the Finland BIT contains only a guarantee that investment will receive MFN treatment. Because the France and Germany BITs include a promise of national treatment for investment and investment-related activities, Finnish investment is entitled to national treatment as well. Finnish investment-related activities, however, may not be entitled to national treatment because investment-related activities are not protected by the MFN clause. Thus, even assuming that investment-related activities include the right to establish investment, the national treatment promised to investment related activities of French and German investors has not been extended to the investment related activities of any other BIT party because no BIT (other than those with France and Germany) protects investment related activities.

Two BITs (with Denmark and the United Kingdom) also extend both national and MFN treatment to investors with respect to certain specific activities, such as the management, maintenance and disposal of investment. None of these activities involves the establishment of investment.

The U.S. BIT differs from the other BITs in a couple of important respects. First, as discussed above, the U.S. BITs expressly guarantee national and MFN treatment with respect to both the establishment of investment and the treatment of investment after it is established. The MFN and national treatment guaranteed to investment after it is established also applies to activities associated with an investment. The term "associated activities" is defined in the U.S. BIT. The second way that the U.S. BIT differs from the others is that it contains two annexes in which Lithuania may place sectors or matters it wishes to exempt from the obligation of national or MFN treatment. Sectors or matters placed in the first annex will be exempt from the obligation of national treatment, while those placed in the second annex will be exempt from the obligation of MFN treatment.

E. Exceptions to MFN and National Treatment

The guarantees of national and MFN treatment typically have two exceptions. The first exception includes special privileges accorded by virtue of a state's membership in a customs union or free trade area. A customs union generally is an arrangement among states whereby they eliminate trade barriers among themselves and adopt a common trade policy with respect to states outside the union. A free trade area is an arrangement among states whereby they eliminate trade barriers among themselves, but each state continues to determine its own trade policy with respect to states not in the free trade area. The effect of this exception is to permit a BIT party to grant special privileges for investment from other states in a customs union or free trade area to which it belongs without having to extend those privileges under the MFN clause to investment from the other BIT party.

All of the BITs concluded by Lithuania to date include a customs union exception. Some of the BITs include other kinds of organizations in the customs union exception. Five BITs (with Germany, Sweden, France, Poland and Switzerland) include common markets. Three BITs (with Germany, Finland and Norway) include an "economic union." Two BITs (with Denmark and France) refer to a "regional economic organization." The Poland BIT includes an "organization for mutual economic assistance." The Finland BIT includes any "other regional cooperative" while the Switzerland BIT refers to a "similar regional agreement." The Denmark, Norway and U.K. BITs include any "similar international agreement."

Some of these terms are not well defined under international law and obviously were intended to create some flexibility. The U.S. BITs generally include an exception applicable just to customs unions and free trade areas. The United States also has agreed to apply the exception to other arrangements that include a customs union or free trade area. The European Community, for example, is a customs union but includes elements that go beyond a mere customs union. The EC nevertheless would be considered an arrangement that includes a customs union.

The other common exception to MFN and national treatment applies to benefits accorded under international agreements or domestic legislation relating to taxation. In effect, a state need not provide MFN or national treatment with respect to the taxation of foreign investment.

All of the BITs concluded by Lithuania, except that with Switzerland, exempt at least some matters of taxation from the national or MFN treatment obligations, although the terms of the exemptions vary. Three of the BITs (with Germany, Finland and Poland) exempt only taxation benefits extended as a result of an international agreement regarding tax matters. Four of the BITs (with Sweden, Denmark, Norway and the United Kingdom) exempt taxation benefits extended as a result of either an international agreement or domestic legislation. The broadest exemption is in the France BIT, which simply exempts tax matters from the MFN and national treatment provisions.

The exception for privileges extended under a tax treaty also varies among agreements. Two approaches predominate. One approach exempts privileges extnded by virtue of a double taxation treaty. The other exempts privileges extended by virtue of a treaty relating wholly or mainly to taxation. The second approach obviously is the broader exception.

The U.S. BIT also contains a broad exclusion. It provides that the treaty does not apply to matters of taxation, except for the provisions relating to expropriation, currency transfers, and disputes settlement. Although the language is complex, the ultimate effect is to exempt all tax matters from the national and MFN treatment provisions.

Note that the Germany BIT sets forth a general exception to the MFN and national treatment requirements for activities taken to further public safety and order or public health or morality. The U.S. BITs have an analogou provision that serves as a general exception to the entire treaty. It is discussed below in the section on General Treaty Exceptions.

V. GENERAL ABSOLUTE STANDARDS OF TREATMENT

BITs generally include a number of provisions promising that investment in general will receive a certain level of protection. These are sometimes referred to as absolute (as opposed to relative) standards because they provide protection to covered investment regardless of whether investment by investors of the host state or a third state receives such protection.

clause appears in Lithuania's BITs with Germany, Denmark, Finland, Switzerland, and the United Kingdom and in the U.S. BITs.

D. Arbitrary or Discriminatory Measures

A fourth clause prohibits either party from impairing by arbitrary or discriminatory measures the operation or disposal of an investment. In some treaties, the word arbitrary is replaced by the word unreasonable. This clause appears in Lithuania's treaties with Sweden, Denmark, Poland, Switzerland, and the United Kingdom.

A very similar clause in the Friendship, Commerce and Navigation Treaty between the United States and Italy was the subject of litigation before the International Court of Justice. In the Case Concerning Elettronica Sicula (ELSI), the Court held that various measures taken by the Mayor of Palermo with respect to an American investment were not arbitrary or discriminatory measures as the term is usesd in the treaty. One reason that the Court found the measures not to be arbitrary or discriminatory was that they were subject to review under Italian law. The United States did not agree with this interpretation of the clause and, after the decision, modified its model treaty to provide that a measure may be considered arbitrary and discriminatory notwithstanding the fact that an investor has had or has exercised the opportunity to review such measure in the courts or administrative tribunals of the host state. The Court's decision remains the most authoritative interpretation thus far of the meaning of arbitrary or disciminatory measures.

E. Consistency with International Law

A fifth clause provides that the treatment of investment must conform to the principles of international law. The effect of this clause is to incorporate principles of customary international law into the treaty. If the host state treats investment in a way that is contrary to customary international law, then that act will violate the treaty (even though the act was not expressly prohibited by the treaty) and will subject the host state to arbitration under the disputes provisions of the BIT. This clause appears in Lithuania's treaties with France and Finland and in the U.S. BITs..

VI. EXPROPRIATION

All BITs explicitly recognize the right of the host state to expropriate foreign investment, provided that certain conditions are met. The conditions differ, however,

from treaty to treaty.

A. Defining Expropriation

BITs typically define the term expropriation broadly to refer not only to a direct seizure of the investment, but to any measures that are tantamount to an expropriation. This includes what is sometimes referred to as a "creeping expropriation," which is an expropriation carried out over a period of time through a series of acts that impair the investment. All of the BITs concluded by Lithuania adopt this broad definition of expropriation, although the BIT with Sweden is far more concise than the others and simply provides that a state "shall not directly or indirectly deprive" an investor of an investment unless certain conditions are met.

B. Public Purpose Required

The first condition that typically appears in these treaties is that the expropriation must be for a public purpose or, in some treaties, "in the public interest." Because of the variety of social and economic systems in the world, the international community appears to be very reluctant to judge whether the act of a state had a public purpose or was in the public interest. Nevertheless, some commentators have suggested that an expropriation might be held to violate this condition in a case where a dictator seized property for the personal use of his family or where the expropriation was undertaken as an act of political retaliation. In any event, it is clear that the scope of these terms is very broad. The public purpose or public interests requirement appears in all of Lithuania's BITs concluded to date. Two of the BITs, those with Denmark and the United Kingdom, require that the expropriation be for a "public purpose related to internal needs," which would seem to be a slightly narrower formulation that would exclude expropriations for foreign policy purposes.

C. Due Process Required

A second condition is that the expropriation be carried out in accordance with principles of due process. This condition appears in Lithuania's BITs with Sweden, Finland, Poland, and Switzerland and in the U.S. BITs. Itseems to require that the expropriation be conducted in accordance with fundamental international norms of due process. What these norms require may not always be clear. Perhaps to add a degree of specificity to this requirement, the Norway BIT provides that the expropriation must be in accordance with domestic legal procedures, rather than due process. Some developed countries, however, would object to the approach used by Norway because they believe that investment should

be protected by international standards, rather than domestic legal rules which the host state may change at any time.

D. Nondiscrimination Required

A third condition is that the expropriation be nondiscriminatory. This clause is particularly intended to prohibit expropriations based on nationality or race or national origin and most commentary on the clause seems to assume that this would be its area of likely application. The language of the clause, however, would seem broad enough to include any program of expropriation which treated some investors differently from others without some legitimate justification. The requirement that the expropriation be nondiscriminatory appears in all of Lithuania's BITs, except that with Germany and in the U.S. BITs.

E. Compensation Required

A fourth condition is that the expropriation be accompanied by compensation. All of Lithuania's BITs require compensation, but they vary slightly in the way that they characterize the amount of compensation.

The most common formulation requires "prompt, adequate and effective" compensation. This formulation appears explicitly in the BITs with Sweden, Denmark, Finland, and the United Kingdom and in the U.S. BITs. As will be seen, all of the BITs adopt this standard in substance, although only those four BITs use the precise wording. Because the term prompt, adequate and effective is not self-explanatory, many of the BITs include additional language setting forth in greater detail the nature of the compensation required.

The term "prompt, adequate and effective" originated in a diplomatic note sent by U.S. Secretary of State Cordell Hull to the Mexican Minister of Foreign Affairs in 1938, demanding compensation for American property expropriated by Mexico. The United States on numerous occasions has explained what it believes is required by the standard of prompt, adequate and effective compensation.

To be prompt, compensation is must be paid without delay, other than the delay normally required for the expeditious completion of formalities. To avoid misunderstanding, several of the BITs state explicitly that compensation must be paid "without delay." This language appears in the BITs with Germany, Denmark, France, Norway, and the United Kingdom. The Poland and Swiss BITs provide that payment shall be made "without undue delay." Thus, those BITs that do not use the term prompt nevertheless require payment either without delay or without undue

delay.

Adequate compensation is compensation at fair market value accompanied by interest from the date of taking until the date of payment. Further, the calculation of fair market value must be based on the value of the investment immediately prior to when the expropriatory action was taken or became known. The purpose of establishing the date of valuation is to ensure that the investor's compensation is not reduced because of dimunitions in the value of the investment that occurred as a result of either the expropriation itself or an announcement of the impending expropriation. As discussed above, expropriations sometimes occur through a series of measures that impair the value of the investment so that, by the time the expropriation is complete, the investment has little value. By establishing the date of valuation, the BITs require that the amount of compensation be calculated based on the value of the investment before these dimunitions occurred.
Many of the BITs explicitly require market value. The term appears in the BITs with Denmark, Finland, Norway, and Poland. The Germany BIT implicitly requires market value. It provides that compensation "shall be equivalent to the value of the investment expropriated immediately before the date the expropriation or nationalization became publicly known." The only relevance of the public announcement of the expropriation is that it may affect the market value of the investment. By specifying that the value of the investment must be calculated before the public announcement, the Germany BIT implicitly refers to market value. Thus, those BITs which omit the prompt, adequate and effective formulation nevertheless require payment of market value.

The same is true of interest. Interest is explicitly required by the BITs with Germany, Denmark, France, Finland, Norway, Poland, Switzerland, and the United Kingdom. Interest thus is required by all BITs, either explicitly or implicitly through the prompt, adequate and effective compensation standard.

Most, but not all, of the BITs specify the rate of interest. The Denmark and Norway BITs require interest at LIBOR. The Finland BIT specifies interest at an appropriate commercial rate as determined by the central bank of the host state. The United Kingdom BIT provides for interest at a normal commercial rate, while the Germany BIT provides for the "usual bank interest." The U.S. BITs require interest at a "commercially reasonable rate."

Many of the BITs also specify the date of valuation. Valuation before the expropriation occurred or became public knowledge is explicitly required by the BITs with Finland, Poland, and the United Kingdom and by the U.S. BITs. Valuation before public announcement of the expropriation is required by the BITs with Denmark, Germany and France. Valuation before the expropriation occurred is expressly required by the BIT with Norway.

Effective compensation is that which is freely transferable and effectively realizable. These latter terms to some extent overlap. Compensation is effectively realizable if the investor can obtain the benefit of the compensation immediately. An example of compensation that would not be effectively realizable is payment in government bonds that cannot be sold. Compensation is freely transferable if it can be repatriated without delay. Payment of compensation in a freely convertible currency that may be transferred without delay generally will satisfy the requirement of effectiven compensation.

All of the BITs set forth in detail the requirements of effectiveness. The Sweden BIT requires that compensation be "transferable without delay in a freely convertible currency." The Denmark BIT requires that compensation be "effectively realisable in a convertible currency [and] freely transferable." The France and Germany BITs specify that compensation must be "effectively realizable . . . and freely transferable." The Finland BIT states that compensation must be "freely transferable in convertible currency." It also requires that transfer be made "without undue delay within such period as normally required for completion of transfer formalities, in any case not exceeding six months." The Norway BIT provides for "realizable and freely transferable" compensation. The Poland BIT states that compensation shall be "freely transferable" and "settled in convertible currency" and provides that payment without delay occurs if payment is "effected within such period as is normally required for completion of formalities, not to exceed three months from the request." The Swiss BIT requires that compensation be "settled in a freely convertible currency" or "in any other way accepted" by the investor. The United Kingdom BIT requires that compensation be "effectively realizable and be freely transferable." The U.S. BITs require that compensation be "fully realizable" and "freely transferable." All of these various formulations are substantially equivalent.

The BITs typically do not specify the exchange rate at which compensation is to be calculated. Most BITs have a separate article on currency transfers which applies to many or all payments related to an investment, including expropriation compensation, and which specifies the exchange rate to be used. The Denmark BIT does specify that expropriation compensation be calculated at the exchange rate used by the central bank. The Finland BIT requires use of the official rate of exchange on the date used for the determination of value. The U.S. BITs provide that the "prevailing market rate of exchange" be used.

F. Consistency with Contractual Obligations Required

A final condition is that the expropriation not be contrary to any contractual obligation. Investors sometimes obtain from the host state a commitment that their investment will not be expropriated. That is, the host state gives up its right to expropriate the investment covered by its commitment to the investor. This

last condition means that investment cannot be expropriated if it would violate the commitment made by the host state. An expropriation in violation of the host state's commitment also would violate the BIT, subjecting the host state to arbitration under the disputes provisions of the BIT. This condition appears in Lithuania's BIT with France and in the U.S. BITs.

It is not clear what remedy would be provided to an investor for violation of this provision. Every investor is entitled to compensation for expropriation, even if the expropriation is completely lawful. In the Case Concerning the Factory at Chorzow, the Permanent Court of International Justice suggested that, where the expropriation is unlawful, the normal remedy would be restitution. In this view, an illegal expropriation must be set aside, if possible, and the property restored to the owner, whereas a legal expropriation will be recognized as valid with the owner entitled only to payment of compensation.

Applying this analysis, the proper remedy for an expropriation contrary to a contractual commitment would be to set the expropriation aside. This also would be the proper remedy for an expropriation that was not for a public purpose, that was discriminatory, or that was not in accordance with due process -- if the applicable BIT required that those conditions be met. As a practical matter, however, arbitrations rarely, if ever, result in setting aside an expropriation. The only remedy genuinely available is compensation, which the investor would be entitled to in any event. Given the impracticality of restitution, some commentators have suggested that, in the case of an unlawful expropriation, the investor should be entitled to additional compensation beyond that required by the prompt, adequate and effective standard -- to compensate for the wrongfulness of the conduct. This remains a controversial issue.

VII. WAR AND CIVIL DISTURBANCE

Although a state normally must compensate an investor for an expropriation, customary international law recognizes an exception for destruction of property due to military necessity during time of war, insurrection, riot, rebellion or other civil disturbance. The host state generally is not obligated to pay compensation for such losses.

Most BITs offer some limited protection for investors against this type of property loss. The most common provision guarantees MFN (and sometimes national) treatment with respect to any compensation for such losses. All of Lithuania's BITs, except that with France, guarantee MFN treatment. In addition, the BITs with Denmark, Switzerland, the United Kingdom and Germany, as do the U.S.

BITs, guarantee national treatment with respect to such compensation. Because of their MFN clauses, Sweden, Finland, Norway, and Poland also are entitled to national treatment, although their BITs do not explicitly require it. As explained below, France also may be entitled to MFN and national treatment because of its general MFN treatment provision.

Under these provisions, Lithuania need not pay any compensation for damages caused by war or civil disturbance. If it does pay compensation, however, then it must compensate investors covered by the BIT as favorably as it treats any other investors, foreign or domestic.

It is unclear whether these MFN and national treatment provisions actually add anything to the agreements. As discussed above, all of the BITs require that investment receive national and MFN treatment generally, which would seem to include payment with respect to losses sustained by war or civil disturbance. Thus, it is likely that these provisions are completely redundant. Although France has no special clause on war or civil disturbance losses, it apparently would be fully protected by its general MFN provision.

Another common clause provides that, if any compensation is paid for such losses, the compensation must be freely transferable. This language appears in the BITs with Germay, Denmark, Finland, and the United Kingdom. The BIT with Sweden requires that payment be transferable without delay in a freely convertible currency, which seems substantively identical to the provisions in the other BITs. The Poland BIT is much weaker, stating that payments, "whenever possible," shall be transferable without delay. The Denmark BIT also requires that interest at LIBOR be paid and that the payment be made without delay and be effectively realizable in convertible currency. In addition, the transfer must be in the original convertible currency unless the investor and host state otherwise agree, and must be at the exchange rate used by the central bank of the host state. Thus, the provisions of the Denmark BIT are the most rigorous and detailed. Because of the MFN clauses in their war and civil disturbance provision, the BITs with all countries except France are entitled to the protections set forth in the Denmark BIT. France probably is entitled to this protection because of its general MFN clause.

In some cases, these provisions on free transferability may also be redundanct. All of the BITs have provisions requiring that certain types of payments related to an investment be freely transferable. If the general currency transfers provision applies to compensation for war or civil disturbance losses, then a special clause requiring free transferability of such compensation would be unnecessary. Indeed, if the general currency transfers provision of even one BIT guarantees free transferability of compensation for war or civil disturbance losses, then all investors covered by a BIT would be entitled to that right because of the general MFN clauses in their BITs.

Some BITs impose on the host state an obligation to compensate covered investors for at least certain losses caused by war or civil disturbance, regardless of whether the host state's investors or the investors of any third state receive similar compensation. Lithuania has concluded one such BIT. Under its BIT with the United Kingdom, nationals or companies of one party that suffer losses during war or civil disturbance in the territory of the other party caused either by government requisitioning of their property or by destruction not due to combat or military necessity shall receive restitution or adequate compensation that is freely transferable. If payment is made to British investors under this clause, then the MFN clauses in the other BITs would require that similar compensation be paid to investors covered by those BITs.

VIII. CURRENCY TRANSFERS

The currency transfers article generally guarantees to investors the right to transfer payments related to an investment into a freely convertible currency without delay at a specified exchange rate.

A. Transfers Covered

The first issue to be addressed in such a provision is the type of payments to which it shall apply. There are two basic approaches.

The first approach, which is the most advantageous from the perspective of the investor, is to guarantee free transfer of all payments related to investment. This is the approach used in Lithuania's BITs with Germany, Poland and Switzerland and in the U.S. BITs. It is preferred by investors because of its breadth. Some developing countries may resist this approach for the same reason.

Because the phrase "all payments related to an investment" is vague, BITs that use this approach generally include an nonexhaustive, illustrative list of payments that are considered payments related to an investment. Among the payments typically on the list are income, profits, dividends, interest, funds in repayment of loans, royalties, fees, sale or liquidation proceeds, earnings of employees and expropriation compensation. The BITs with Germany, Poland and Switzerland as well as the U.S. BITs all include such a list.

A variation on this first approach is exemplified by the U.K. BIT. The U.K. BIT also describes the types of payments covered by the transfers provision with a broad phrase. Specifically, the U.K. BIT guarantees free transfer of "investments and returns." Because both terms are defined in the U.K. BIT, the drafters of that agreement apparently saw no need to include an illustrative list of payments covered

by the transfers provision.

The second approach is simply to list the types of payments covered by the transfers provision. This is the approach used in Lithuania's BITs with Sweden, Denmark, France, Finland and Norway. Typically, the exhaustive list used in the BITs that adhere to the second approach is similar to the nonexhaustive list used in BITs that adopt the first approach.

B. Protection Required

1. Convertible Currency

The transfers provision usually specifies that transfer will be permitted in a freely convertible currency. Such language appears in Lithuania's BITs with Sweden, Finland and Poland. The U.S. BITs use the term "freely usable currency."

An alternative sometimes used is to provide that transfer shall be in the convertible currency in which the investment was made or in any covertible currency to which the parties agree. Because the parties may not reach agreement on any other currency, this formulation in effect may mean that the host state is obligated only to permit transfer into the original currency. This formulation appears in Lithuania's BITs with Denmark, Norway and the United Kingdom.

2. Free Transfer

A BIT transfers provision usually will specify that the transfer must be "free" or permitted "without delay." Examples will be found in Lithuania's BITs with Germany, France, Norway, Poland, Switzerland, and the United Kingdom and in the U.S. BITs.

Some BITs, however, will qualify this requirement so that some delay is permitted. Typically, the delay is to permit the completion of formalities. BITs that anticipate some sort of delay usually specify a deadline after which transfer must be permitted. The Sweden BIT, for example, specifies that transfer shall be permitted without delay and defines "without delay" as the period normally required for the completion of formalities, not to exceed two months. The Denmark BIT is quite similar, but sets the deadline at three months. The Finland BIT states simply that transfers shall be without "undue delay," which it defines as a period not to exceed six months.

3. Exchange Rate

Finally, the BIT should specify the rate of exchange at which transfers will be allowed. This is to ensure that transfer is completed not only without delay, but in a way that preserves the value of the payments to be transferred.

Several formulations are commonly used to specify the exchange rate. Some BITs provide for transfer at the official exchange rate. This appears in Lithuania's BITs with Sweden, France, and Norway. Another formulation, which appears in the Denmark BIT, calls for the rate of exchange used by the central bank of the host state. A third formulation, seen in the U.K. BIT, provides for a rate in accordance with the host state's laws and regulations. These latter two formulations are not the most desirable from the investor's perspective because they seem to allow the possibility that the host state, through the central bank or through its banking regulations, will apply a special, unfavorable rate that will impair the value of the funds to be transferred.

Investors thus will usually prefer a formulation that links the exchange rate to objective factors not easily subject to host state control. The U.S. BITs, for example, call for the "prevailing market rate of exchange . . . with respect to spot transactions." The Poland BIT adopts a similar approach, calling for the "normal applicable exchange rate." The Germany BIT specifies the "cross rate" obtained for those rates which would be applied by the International Monetary Fund on the date of payment for the conversion of the currencies concerned into Special Drawing Rights.

C. Exceptions

Frequently, developing countries seek inclusion in their BITs of an escape clause that permits exceptions to free transferability during periods when foreign exchange reserves are at exceptionally low levels. Such clauses generally allow a delay of transfers for some temporary period, usually subject to a requirement that any delay be on an MFN basis and sometimes subject to a requirement that a certain percentage of the delayed payments be transferable each year until the full amount has been transferred.

Some of Lithuania's BITs include a different type of exception. Because its currency was not convertible at the time it began BIT negotiations, Lithuania included in several of its BITs language in a protocol or side letter providing that during a transitional period Lithuania would not be able to permit free transfer of all payments covered by the transfers article. Such exceptions appear in BITs with Denmark, France, Switzerland, Germany and the United Kingdom. In the case of the latter three BITs, Lithuania agreed to expiration dates for the transitional period:

December 31, 1995, in the case of the Poland BIT and within three years from the treaty's entry into force in the case of the Germany and U.K. BITs.

Because the BITs have MFN clauses in them, such escape clause are of limited usefulness unless they appear in all BITs. If even one BIT omits the escape clause, then investors covered by that BIT must be permitted free transfer. Once any investor is permitted free transfer, then all investors covered by BITs with an MFN clause would be entitled to free transfer, notwithstanding the existence of an escape clause in those BITs.

IX. INVESTOR-TO-STATE DISPUTES PROVISION

BITs virtually always guarantee to investors the right to submit a dispute with the host state to binding arbitration. This provision is of great importance because, along with the state-to-state disputes provision discussesd below, it makes the substantive provisions of the BIT legally enforceable.

A. Reasons for the Provision

In the absence of an investor-to-state disputes provison, an investor whose investment is injured by a violation of the BIT generally would have only two types of remedy. Frequently, however, neither would be effective.

First, the investor could bring a claim against the host state in a domestic court. Such a suit often would be unsuccessful because the host state would assert the defense of sovereign immunity.

Second, the investor could request its own government to espouse the claim against the host state. Espousal is a process whereby a state, usually through diplomatic channels, asserts a claim for compensation for an injury caused to one of its nationals or companies by another state. Espousal is not necessarily an effective remedy because the investor's state may refuse to espouse the claim, particularly if it wishes to avoid a confrontation with the host state. Even if espousal did occur, many years may pass before diplomatic negotiations resulted in a settlement. Further, under customary international law, the espousing state may settle a claim on any terms it desires. Thus, the investor's government may agree to accept less than the full value of the claim as a settlement, with the result that the investor probably would never be fully compensated. As an alternative to negotiation, the investor's state could attempt to arbitrate the dispute with the host state, but this would be possible only if the host state consented to arbitration.

The investor-to-state disputes provisions generally is superior to

litigation in local courts or espousal. It creates an arbitral mechanism that the investor can invoke without having to persuade its own state to espouse the claim or otherwise participate. At the same time, these provisions contain a consent to arbitration by the host state, thereby eliminating the defense of sovereign immunity to suit.

B. Disputes to Which it Applies

The first clause of the investor-to-state disputes provision generally defines the nature of the disputes to which the provision applies. Only these disputes can be submitted to arbitration under the provision.

One of the most common approaches requires only that the dispute involve investment. Various formulations are used, with no substantive difference among them. Examples of these formulations are disputes "in connection with" investment, "related to" investment, "with respect to" investment, "regarding" investment or "concerning" an investment. This approach was adopted in Lithuania's BITs with Germany, Denmark, France, Finland, Norway and Switzerland. These formulations are broad enough that they could cover disputes that did not necessarily arise out of an alleged violation of the BIT, as long as the dispute in some way concerned an investment. Such disputes might include, for example, disputes arising out of an investment agreement between the investor and the host state.

A second approach requires that the dispute actually involve the BIT. The Sweden BIT, for example, applies its investor-to-state disputes provision to any dispute concerning the "interpretation or application" of the BIT. The U.K. BIT applies its provision to disputes concerning the obligations of the host state under the BIT. This second approach obviously narrows the applicability of the investor-to-state disputes provision.

The U.S. BITs adopt a third approach. They provide that the investor-to-state disputes provision applies to a dispute relating to (1) an investment agreement between the host state and an investor; (2) an investment authorization issued by the host state to the investor; or (3) an alleged breach of any right conferred by the BIT. The U.S. approach thus explicitly allows the investor to use the investor-to-state disputes provision to enforce agreements with the host state and not merely rights conferered by the BIT. At the same time, the U.S. approach does not apply to all disputes concerning an investment and thus provides a narrower scope to the provision than the first approach.

C. Obligation to Attempt an Amicable Resolution

BITs typically require that the investor and the host state attempt to resolve the dispute amicably, that is, through negotiations, before invoking arbitration. Frequently, they require that a certain amount of time after the dispute arose must elapse before either party is entitled to submit the dispute to arbitration. This amount of time is three months in the Denmark, Finland, Norway and United Kingdom BITs. It is six months in the BITs with Germany, Sweden, France, Poland, and Switzerland and in the U.S. BITs.

D. Form of Arbitration

Arbitration may be institutional or ad hoc. Institutional arbitration refers to arbitration involving an established organization which typically maintains lists of arbitrators, provides rules of procedure and perhaps performs some role in the arbitration itself, such as assisting in the selection of arbitrators. Examples of these institutions are the Permanent Court of Arbitration in The Hague; the International Centre for the Settlement of Investment Disputes (ICSID), which is affiliated with the International Bank for Reconstruction and Development (World Bank) in Washington; and the Court of Arbitration of the International Chamber of Commerce in Paris. Ad hoc arbitration refers to an arbitration in which a sole arbitrator or an arbitral tribunal is selected without the assistance of an institution and the parties or the arbitrator(s) adopt rules tailored for the specific arbitration.

A third form of arbitration has characteristics of both institutional and ad hoc arbitration. A few institutions have drafted and adopted a set of arbitration rules that parties or arbitrators may select for use in an ad hoc arbitration. These rules prescribe the method for selecting arbitrators, designate an appointing authority who is authorized to name an arbitrator in the event that the normal system for choosing arbitrators fails, and set forth the procedures to be followed during the arbitration. Examples of such rules include the Arbitration Rules of United Nations Commission on International Trade Law (UNCITRAL), generally known as the UNCITRAL Rules; and the Model Rules proposed by the International Law Commission. These institutions, however, do not maintain lists of arbitrators, do not assist in selecting arbitrators, and have no involvement of any kind in the arbitration itself. Arbitration using these rules is ad hoc in the sense that the arbitration occurs without any institutional support, but is institutional in the sense that an institution has prepared the rules in advance of the arbitration.

All of Lithuania's BITs, except those with Switzerland and Germany, provide for arbitration before a tribunal using the UNCITRAL Rules. The Switzerland BIT provides for ad hoc arbitration before a tribunal, with the tribunal authorized to choose its own rules. Because the Switzerland BIT does not specify

which rules shall apply, it includes additional language specifying how the arbitral tribunal shall be formed. The Germany BIT provides for ad hoc arbitration before a tribunal constituted in much the same way as the tribunal prescribed by the state-to-state disputes provison.

All of Lithuania's BIT authorize, as an alternative, arbitration before ICSID, provided that both parties to the BIT have become parties to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, generally known as the ICSID Convention. ICSID has rules providing for both arbitration and conciliation. Some BITs specify that either arbitration or conciliation may be used and provide that, in the event of a dispute as to which to use, the choice shall be made by the investor. Lithuania's BIT with Sweden has such language, as do the U.S. BITs.

The choice of whether to use ICSID arbitration or ad hoc arbitration under the UNCITRAL Rules generally is made by the party initiating the arbitration. Under a number of Lithuania's BITs, only the investor has the right to initiate arbitration and thus only the investor may choose which form of arbitration shall be used.

Ever if the BIT does not state that the investor has the sole right to chooses the form of arbitration, the investor as a practical matter probably will have such a right. The BIT technically is an agreement between two states and thus only the states actually are bound by the BIT. Although the BITs contain the states' express or implied consent to arbitration, these agreements do not bind the investor to arbitration because the investor is not a party to the agreement. Thus, in the absence of some further consent by the investor, the host state probably cannot initiate arbitration against the investor. For this reason, those BITs that permit the host state to intitiate arbirtration sometimes provide that the investor may consent to arbirtration, following which either party may initiate the arbitration. Those BITs that state simply that either the investor or the host state may submit the dispute to arbitration thus may be somewhat misleading in suggesting that the host state has a power to arbitrate that, as a practical matter, it does not have.

Note that, by this same logic, only the investor can decide between arbitration or conciliation under ICSID auspices. Until the investor has consented, the host state is powerless to initiate either proceeding. As a practical matter, the investor can use his consent to control the choice of forum.

The principal advantage of ad hoc arbitration is the flexibility to structure the arbitration in the way preferred by the parties. To gain the full advantage of this flexibility, some BITs provide that, in the case of ad hoc arbitration under the UNCITRAL Rules, the parties may modify the rules by agreement. Such a clause appears, for example, in Lithuania's BITs with Denmark, Finland, Norway

and the United Kingdom. Even in the absence of such language, the parties always would be free as a matter of international law to conclude an agreement providing that a particular arbitration would be be governed by a modified version of the UNCITRAL Rules and that agreement almost certainly would be accepted as binding by the arbitral tribunal.

Some of Lithuania's BITs authorize additional methods of arbitration. The Poland BIT authorizes arbitration before the International Chamber of Commerce (ICC) in Paris and the Stockholm Chamber of Commerce. The U.K. BIT authorizes arbitration before the ICC and the Additional Facility. The Additional Facility is an institution established by ICSID to arbitrate investment disputes that for various reasons fall outside the jurisdiction of ICSID. For example, a state and an investor may not arbitrate a dispute before ICSID if the state is not a party to the ICSID Convention, but they may submit the dispute to the Additional Facility.

Lithuania's BIT with France provides, at article 8(2), that the investor may choose conciliation before the dispute is submitted for arbitration. Conciliation, of course, generally is considered a nonbinding procedure. Presumably, if conciliation is unsuccessful, either disputant may then submit the dispute to arbitration.

E. Consent to Arbitration

The general rule is that an agreement to submit a dispute to arbitration will be deemed an implied consent to arbitration and an implied waiver of sovereign immunity with respect to the arbitral tribunal. Some BITs, however, include a clause in which the parties explicitly consent to arbitration, simply to remove all doubt. Such language appears in Lithuania's BIT with Sweden and in the U.S. BITs.

F. Enforcement of the Arbitral Award

Many BITs include clauses intended to increase the likelihood that an arbitral award will be enforceable in domestic courts. There are a number of multilateral treaties that require states to enforce foreign arbitral awards. The most important of these treaties are the ICSID Convention and the United Nations Convention on the Recognition and Enforcement of Foreign Arbirral Awards, often known as the New York Convention.

Under the ICSID Convention, the parties undertake to enforce in their domestic courts awards issued by an ICSID arbitral tribunal. Thus, ICSID awards will be enforceable in the domestic courts of all states that have adhered to the ICSID Convention. The ICSID Convention, however, will not apply to an arbitral award

issued by an ad hoc tribunal operating under the UNCITRAL Rules or to an arbitration before other institutions, such as the International Chamber of Commerce or the Stockholm Chamber of Commerce.

The New York Convention applies to foreign arbitral awards generally and thus can be used to enforce arbitral awards for institutions other than ICSID. The majority of states, however, will enforce an award under the New York Convention only if it was issued in a state that also is a party to that Convention. Thus, to help ensure the enforceability of awards, some BITs provide that arbitrations under the investor-to-state disputes provision shall take place in a state that is a party to the New York Convention. Such a provison appears in the U.S. BITs, for example. Some BITs go farther and specify a particular city as the place of arbitration.

In the absence of a treaty, such as the ICSID Convention or the New York Convention, a state is under no obligation to enforce a foreign arbitral award. Thus, in theory, an award issued under the investor-to-state disputes provision of a BIT might not be enforceable in the courts of either BIT party because neither was a party to the ICSID or New York Conventions, although that same award would be enforceable in the courts of certain other states. To ensure that an award issued under the investor-to-state disputes provision is at least enforceable in the courts of the BIT parties, some BITs provide that each party shall enforce the award in its territory or that each party shall provide in its territory for the enforcement of the award. The Switzerland BIT, for example, provides that each party shall ensure the recognition and enforcement of awards under the investor-to-state disputes provision. The U.S. BITs are similar. The Finland BIT with Lithuania includes a variation of this clause. It provides that awards shall be recognized and enforced in accordance with the New York Convention.

Two other BITs, with Sweden and Poland, provide that each party shall execute the award in accordance with its laws. From the investor's perspective, this language is not ideal because it seems to suggest that the obligation to enforce is subject to local law. That is, if local law does not provide for enforcement of the award, then the state will not enforce it.

G. Choice of Law Clauses

Some BITs include a choice of law clause, that is, a clause specifying which law shall be applied in an arbitration under the investor-to-state disputes provision. Virtually all international arbitral tribunals will enforce such a clause if one exists.

In the absence of a choice of law clause, a tribunal must choose between national or international law or some combination of the two. International tribunals

sometimes have chosen international law and sometimes national law, depending upon the circumstances. Among the factors that influence the decision are whether the tribunal believes that international law on the subject exists and whether the parties have executed an investment agreement or other document that seemed to contemplate that a particular body of law would be applied. If the tribunal chooses national law in an investment dispute, it probably will choose the law of the host state or perhaps the law of the state in which the tribunal is located.

Investors virtually always prefer that international law apply both because international legal standards often are more protective of investment than national law standards and because national law can be manipulated by the host state. The host state often will prefer that its own law apply.

It is rare to find a BIT that specifies that only national law shall apply. The more common approaches are to specify that international law applies or that international and national law shall apply. This last approach leaves to the tribunal the task of deciding in which circumstances to apply international law and in which circumstances to apply national law. From the investor's perspective, such an approach is little better than no choice of law clause at all.

Lithuania's BIT with Poland adheres to this last approach. It provides that the arbitration shall be based on the provisions of the BIT, the national law of the host state, including its choice of law principles, and the principles of international law.

The U.S. BITs have an implicit choice of law clause. Specifically, the U.S. BITs include a provision in article II that investment shall receive treatment in no case less than that required by international law. Thus, the U.S. position is that international law must apply to any arbitration, except where national law is more favorable to the investor.

H. Relevance of Compensation from Investment Insurance

Foreign investment frequently is insured by the investor's state or some other entity against certain types of noncommerical risk, such as expropriation, war loss, or currency exchange controls. Examples of such insurance programs include the program administered by the United States through the Overseas Private Investment Corporation (OPIC) and the program administrated by the Multilateral Insurance Guarantee Agency (MIGA), an affiliate of the World Bank. Where the investor receives compensation for losses through one of these insurance programs, a question may arise concerning whether the host state's liability should be reduced by

the amount of the compensation received by the investor.

Some BITs include clauses that explicitly address this question. In general, they provide that the host state shall not assert as a defense or offset to its liability the fact that the investor has received compensation under an insurance contract. Thus, an investor who has been partially or wholly compensated through an insurance program nevertheless may seek full compensation from the host state. Such a clause appears in Lithuania's BIT with Switzerland and in the U.S. BITs.

The rationale for this clause is that the compensation received by the investor does not come from the host state, but is taken from a fund composed of the premiums paid by all insured investors over a period of years. Developed states that seek clauses of this type believe that it would be unfair for the host state to escape liability for its wrongful act merely because the investor was prudent and purchased insurance. Of course, in many cases, the insurance agency that compensated the investor will seek reimbursement from the host state and thus, ultimately, the host state may not escape liability even if the investor is barred from bringing a claim.

Many BITs include additional language relating to the rights of the insurer to recover compensation from the host state. These are discussed below in the section concerning Subrogation.

I. Authority and Finality of Awards

Many BITs provide that an arbitral award shall be final and binding. Such provisions appear in Lithuania's BITs with Sweden, Denmark, Norway, and Switzerland and in the U.S. BITs. The ICSID Convention itself provides that its awards are final and binding and thus, at least in the case of ICSID arbitration, this provision is unnecessary.

J. Espousal of Disputes Submitted to Arbitration

Because many BITs include provisions for both investor-to-state arbitration and state-to-state arbitration, some treaties have language providing that a dispute submitted to arbitration under the investor-to-state disputes provision may not also be submitted to arbitration by the investor's own state under the state-to-state disputes provision. Typically, there are one or two exceptions set forth in this provision. One exception applies where the tribunal formed under the investor-to-state disputes provision does not have jurisdiction. The other applies where the tribunal formed under the investor-to-state disputes provision renders an

award and the host state does not comply with the award. Such provisions appear in the Lithuania's BIT with Germany and Switzerland and in the U. S. BITs.

K. Company Nationality under the ICSID Convention

One provision sometimes found in investor-to-state disputes provisions is relevant only to ICSID arbitration. The ICSID Convention applies to disputes between one state and an investor of another state. Where the host state expropriates a company, the host state may argue that the company no longer is a company or an investor of the other state. Accordingly, article 25(2)(b) of the ICSID Convention provides that two states may agree that, for purposes of ICSID arbitration, a company shall be treated as a company of a state if, immediately prior to an expropriation, nationals or companies of that state owned or controlled it. Some BITs include a provision containing just such an agreement. A provision pursuant to article 25(2)(b) of the ICSID Convention appears in Lithuania's BIT with Sweden and in the U.S. BITs.

X. STATE-TO-STATE DISPUTES PROVISION

BITs virtually always include a provision for the resolution by binding arbitration of disputes between the two states that are parties to the agreement. These provisions have become remarkably uniform among BITs drafted by different states.

A. Disputes To Which It Applies

The state-to-state disputes provisions generally apply to disputes concerning the interpretation or the application of the BIT. This is the language that appears in all of Lithuania's BITs and in the U.S. BITs.

B. Obligation to Attempt an Amicable Resolution

The BITs generally begin with a requirement that such disputes, if possible, shall be settled by negotiation or through diplomatic channels. Frequently, they require that some period of time must elapse before arbitration may be commenced, in order to give the parties time to resolve the dispute amicably. This minimum time period is three months in the Denmark BIT, six months in the

is that it expedites the appointment process in the event that the first appointments are completed quickly.

Not all BITs, however, set separate deadlines for each round of appointments. Lithuania's BIT with France, for example, sets a deadline of two months for the completion of all appointments. The intent obviously is to expedite the process. The danger is that virtually all of the time will be used on the first round with the result that the second round is not likely to be completed on time.

D. Appointing Authority

Two problems in particular can prevent the formation of a tribunal and thus defeat the arbitration provision. One problem occurs where a party refuses to name an arbitrator. The other problem occurs where the two arbitrators cannot agree on a third arbitrator (or the third arbitrator does not receive the approval of both parties, if approval is required.)

Both problems have the same solution. The standard state-to-state disputes provison specifies that, in the event that an arbitrator is not selected within the time specified, either party may request that a neutral official, known as an appointing authority, make the appointment.

BITs most commonly designate the President of the International Court of Justice to be the appointing authority. If the President is a national of one of the parties or is unable to make the appointment, then the Vice-President may be requested to act as appointing authority. If the Vice-President is a national of one of the parties or is unable to make the appointment, then the most senior member of the Court who is not a national of one of the parties may be requested to make the appointment. This is the mechanism prescribed in all of Lithuania's BITs except that with France. In the France BIT, the appointing authority is the Secretary-General of the United Nations. In the U.S. BITs, it is the Secretary-General of ICSID.

E. Tribunal Procedure

Most BITs have standard language providing that the tribunal shall determine its own procedures, that it shall decide by a majority vote, and that its decision shall be final and binding. All of these provisions appear in most of Lithuania's BITs. In some cases, the tribunal's power to determine its own procedures is expressly made subject to any other agreement by the parties. Even in the absence of such a clause, however, the parties always would be free to agree on other procedures and the tribunal almost certainly would regard itself as bound by that agreement. A clause providing that the tribunal may determine its own

procedure is not strictly necessary, in any event, because the rule under customary international law is that international arbitral tribunals have the inherent authority to determine their own rules of procedure.

F. Costs of Arbitration

The final issue addressed in most state-to-state disputes provisions is the payment of costs. It generally is presumed that every party will pay the costs of its own representation, although some BITs expressly so state. Such clauses appear in Lithuania's BITs with Sweden, Norway, Poland and the United Kingdom.

The real question is how to allocate the costs of the tribunal itself. There are two basic approaches. One approach specifies that the costs of the tribunal shall be borne by the parties evenly. This approach appears in Lithuania's BITs with France and Finland and in the U.S. BITs. A second approach specifies that each party shall bear the costs of the arbitrator it appoints, with the remaing costs divided evenly. This approach appears in Lithuania's BITs with Germany, Sweden, Poland, and the United Kingdom.

These two approaches seem to reflect two different underlying conceptions of the role of the party-appointed arbitrator. In theory, the party-appointed arbitrator is neutral and, once the tribunal has been formed, is not expected to take instructions from the party that appointed him or to have any contact with such party concerning the merits of the case other than during tribunal proceedings. Some states, however, regard a party-appointed arbitrator as a partisan who is expected to adopt the position of the party that appointed him. The view that each party should bear the costs of the arbitrator it appoints seems, even if unconsciously, to reflect this latter view that a party-appointed arbitrator is not entirely neutral and maintains some affiliation with the party that appointed him. This view also may reflect a desire on the part of some states to control the costs of arbitration, linked with the assumption that the expenses of the arbitrator appointed by that state can be more readily controlled than those of the other party-appointed arbitrator.

Some BITs, after specifying the allocation of costs, provide that the tribunal may override this instruction and allocate the costs differently. Although the BITs rarely state the grounds on which the tribunal should reallocate the costs, the underlying assumption presumably is that a party that has raised frivolous arguments or acted in such a way as to hinder, or increase unnecessarily the costs of, the arbitration should be expected to pay a greater share of the costs. Clauses allowing the tribunal to reallocate the costs appear in Lithuania's BITs with Germany, Sweden, France, Finland, Poland and the United Kingdom and in the U.S. BITs.

A BIT may omit any allocation of costs. The Denmark BIT, for example, states that the tribunal shall determine how the costs are to be shared. The Norway BIT adopts a hybrid approach, providing that each party shall bear the costs of its own representation and the arbitrator it appointed, with the tribunal deciding how the remaining costs shall be shared. The Switzerland BIT declines to mention costs at all, which means in effect that the tribunal shall determine how costs are to be borne.

XI. CONSULTATIONS

Many BITs include a provision requiring the parties to consult concerning the treaty upon the proposal of either party. The state-to-state disputes provision, of course, imposes on the parties an obligation to consult with respect to any dispute before invoking arbitration. Further, as noted above, even in the absence of a consultations clause, customary international law generally requires that parties engage in meaningful negotations before proceeding to arbitration.

Consultations provisions nevertheless are included to emphasize the importance the parties place on amicably resolving disputes Perhaps more importantly, such provisions suggest that the parties should consult on matters that may not rise to the level of a dispute. For example, the host state may provide the other state with a copy of proposed new regulations affecting investment to determine whether, in the view of that other state, the regulations would violate the treaty. Through formal or informal consultations, the parties can prevent disputes from arising and work cooperatively to ensure that both parties enjoy the full benefit of the treaty.

Consultations provisions appear in Lithuania's BITs with Denmark, France, Norway, Poland and the United Kingdom and in the U.S. BITs.

XII. PRESERVATION OF RIGHTS

BITs generally are intended to establish a minimum standard of treatment to which covered investment is entitled. The question may arise whether the BIT also establishes the maximum standard of treatment to which investment is entitled. That is, does the BIT override other laws or agreements that provide investment with more favorable treatment?

Nothing in the BIT suggests that it does establish a maximum standard and to so conclude would be contrary to the purpose of these agreements, which is to protect and promote foreign investment. Nevertheless, out of an abundance of caution, some BITs expressly provide that other laws or agreements providing for

more favorable treatment shall prevail over the BIT. Obviously, the intent is that these other laws or agreements prevail only to the extent that they are more favorable.

The difference among provisions of this type rests on the types of laws or agreements that are covered by the provision. There are three types that may be covered. These are (1) international law (2) domestic laws, and (3) agreements between the host state and the investor.

Lithuania has concluded BITs with either of two approaches. The Germany, Sweden, Finland, Poland and United Kingdom BIT provisions apply to domestic and international laws that provide more favorable treatment. The France and Switzerland BIT provisions apply to agreements between the host state and the investor that provide more favorable treatment. The U.S. BITs generally apply to all three types of laws or agreements, that is, international and domestic law as well as agreements between the investor and the host state..

XIII. SUBROGATION

As noted above in the section on investor-to-state disputes provisions, many states provide insurance to their investors against certain types of losses, such as those resulting from expropriation or from currency exchange controls. Many BITs include provisions stating that, where the investor's state has paid it compensation for a loss under such an insurance program, the host state shall recognize that the investor's state has become subrogated to any rights that the investor had against the host state arising out of the loss. Such a provision appears in all of the BITs concluded by Lithuania thus far. The subrogation provision does not appear in the U.S. BITs because the United States obtains such rights through a separate agreement negotiated by its Overseas Private Investment Corporation (OPIC).

Some BITs include explicit language stating that the investor's state is not entitled to any greater right than the investor had. Such language appears in Lithuania's BITs with Germany, Norway, Poland and the United Kingdom.

Some BITs also provide that any compensation received by the investor's state in noncovertible currency as a result of this subrogation shall be freely available for purposes of meeting expenditures incurred in the host state. Such a provision appears in Lithuania's BIT with the United Kingdom.

XIV. OTHER PROVISIONS

A number of other provisions occasionally appear in a BIT. This section discusses some of these provisions, with particular emphasis on certain provisions that originated in the U.S. BITs and that have begun to appear in other BITs, including some of those proposed to Lithuania. Part Two discusses these provisions as they appear in the proposed BITs.

A. Amendment of Treaty

Some BITs include a provision stating that the treaty may be amended by agreement of the parties. Such a provision is not strictly necessary because, under the Vienna Convention on the Law of Treaties, a treaty always can be amended by agreement of the parties. Typically, these provisions state that any amendment will enter into force when the parties notify each other that their internal or constitutional requirements for approval of international agreements have been satisfied. Provisions for amendments appear in Lithuania's BITs with Denmark and Norway.

B. Performance Requirements

The U.S. BITs provide that neither party shall impose performance requirements as a condition of establishing, expanding or maintaining an investment. Examples of performance requirements are local laws that require the purchase of raw materials locally or the export of the finished product. Host states sometimes impose such requirements on foreign investment to ensure that the investment provides employment locally or serves as a net importer of foreign exchange.

The U.S. believes that performance requirements are inconsistent with the theory underlying the BIT that investment decisions should be determined by market forces rather than by government regulation. Lithuania has not yet concluded a BIT with a prohibition on performance requirements.

C. Entry and Sojourn

Under U.S. immigration law, foreign nationals are entitled to a visa to enter the United States for the purpose of engaging in various activities in connection with an investment. The immigration law includes one additional condition, however. The foreign national must be a national of a state that has concluded a treaty with the United States authorizing such visas. Because of this requirement, these visas are known as "treaty investor" visas.

U.S. BITs include a provision intended to grant to nationals of the other BIT party the benefit of the treaty investor visa law. The provision states that, subject to the laws relating to the entry and sojourn of aliens, nationals of either party shall be permitted to enter and to remain in the territory of the other party for the purpose of establishing, administering or advising on the operation of an investment to which they or their employer have committed a substantial amount of capital or other resources. The language of this provision follows the language of the applicable U.S. regulations and is not intended to create any new rights under the treaty. For this reason, the provision is subject to each party's own laws. The provision does, however, ensure that nationals of the other party obtain the full benefit of the statutory right created by U.S. law.

Lithuania's BITs with Sweden and Germany have analogous provisions.

D. Employment

Some states have laws requiring that foreign investors hire local personnel to ensure that they obtain employment and training. U.S. investors, however, believe that the security of their investment depends upon a right to employ at least certain managerial personnel without regard to nationality. Accordingly, the U.S. treaty provides that companies that are considered investments within the meaning of the treaty shall be permitted to engage top managerial personnel of their choice, regardless of nationality.

One point that the U.S. treaty does not make very clear is whether the right to hire top managerial personnel includes the right to have such personnel admitted into the territory of the host state. The U.S. understanding of this provision is that it does not override the host state's immigration laws. Thus, the investment can hire the top managerial personnel of its choice only if such personnel have been granted permission to enter the territory of the host state.

E. Judicial Access

The U.S. BITs provide that each party shall provide effective means of asserting claims and enforcing rights with respect to investment, investment agreements, and investment authorizations. The purpose of this provision is to ensure that the local courts of the host state are available to hear claims brought by foreign investors.

F. Publication of Laws

The U.S. BITs require each part to make public all laws, regulations, administrative practices and procedures, and adjudicatory decisions that pertain to or affect investments. This provision is intended to permit investors to know the legal requirements imposed by the host state on investment. The term "make public" is used to convey the idea that such laws must be accessible to the investor. It does not necessarily require the host state to distribute copies of such laws, as long as the laws can be obtained by an interested investor.

G. General Treaty Exceptions

The U.S. BITs contain general treaty exceptions that permit the host states to engage in certain activities that, without the exception, would violate the BIT. These activities include measures necessary for the maintenance of public order, the fulfillment of the host states' obligations with respect to the maintenance or restoration of international peace or security, or the protection of its own essential security interests.

The second exception, for measures necessary for the fulfillment of obligations with respect to international peace or security, is intended to apply to a state's obligations with respect to international peace or security under the United Nations Charter. With respect to the third exception, the United States has for several years taken the position that a state's determination that a measure is necessary to protect its essential security interests is not subject to review. That is, no state or tribunal can decide whether a particular measure is or is not necessary to protect the essential security interests of another state. Under this U.S. interpretation, as long as a state declares an action to be necessary for its essential security interests, the action would be consistent with the treaty and not subject to review by any tribunal.

This interpretation is subject to the very serious criticism that it may render the entire treaty illusory. It gives either party the power to exempt its conduct from treaty obligations and from arbitral review merely by declaring the conduct to be necessary for its essential security interests.

The essential security interests exception does not explicitly provide that a state shall be the exclusive judge of what measures are necessary to protect its essential security interests. This is a unilateral interpretation placed on the clause by the United States.

It is unclear whether an arbitral tribunal would accept the U.S. interpretation. The U.S. attempted to apply a similar interpretation to an analogous

clause in its commercial treaty with Nicaragua during the case brought against the United States by Nicaragua in 1984 before the International Court of Justice, but the Court rejected the U.S. argument. The basis for the Court's decision was that the actual language of the treaty did not indicate that each state was the sole judge of whether measures were necessary for its essential security interests. Thus, it is doubtful that the U.S. interpretation is correct, except in cases where the United States and the other party agree on this special interpretation. The U.S. BIT with Russia, for example, contains an explicit statement that that the essential security interests provision is self-judging.

XV. ENTRY INTO FORCE, DURATION AND TERMINATION

The final provision of most BITs sets forth provisions concerning its entry into force, the duration of its existence, and its termination.

A. Entry Into Force

The majority of BITs assume that, following signature of the treaty, the negotiators must obtain additional approvals under their states' constitutions or internal laws before the treaty may enter into force. In most states, the treaty must be submitted to a legislative body for approval. Accordingly, a BIT usually provides that it shall enter into force once each party has notified the other that its internal or constitutional requirements have been satisfied. If each party notifies the other on different days, then the treaty enters into force on the day of the second notice.

Four of Lithuania's BITs -- those with Sweden, Poland, Switzerland, and the United Kingdom -- provide for entry into force on the day of such notice. Lithuania's other five BITs as well as the U.S. BITs provide that the treaty shall enter into force either 30 days or one month after notice of compliance with constitutional or internal requirements.

B. Duration and Termination

The BITs generally remain in force for a fixed term. Ten years is the most common term and is the term that appears in Lithuania's BITs with Germany, Denmark, Norway, Poland, Switzerland and the United Kingdom. It also is the term used in the U.S. BITs. Lithuania's BITs with France and Finland provide for an initial term of 15 years, while its BIT with Sweden provides for an initial term of 20 years.

It is virtually always true that the BIT cannot be terminated during this initial term. An important way in which a BIT encourages foreign investment is by

assuring the investor of a stable legal environment for investment. Thus, a lengthy initial term in which the treaty is not subject to termination is standard in the BITs.

The BITs nearly always can be terminated at the end of the fixed term by notice from one party to the other. The notice must be given one year before the end of the term in all of Lithuania's BITs except those with Norway and Switzerland. These require notice six months before the end of the term.

If the BIT is not terminated at the end of the initial term, it continues in force for some additional period of time. There are two different approaches to the continuation of the treaty beyond the initial term.

Under one approach, the treaty continues in force indefinitely, subject to termination with prior notice. The amount of prior notice generally is the same as that required to terminate the treaty at the end of the initial term. This approach was adopted in Lithuania's BITs with Germany, Sweden, Denmark, France, Finland, and the United Kingdom and in the U.S. BITs.

Under the other approach, the treaty continues in force for additional fixed terms. These additional terms usually are of the same duration as the initial term. This approach appears in Lithuania's BITs with Norway and Poland. These additional terms, however, may be of a different duration than the initial term. In Lithuania's BIT with Switzerland, for example, the original term is 10 years, but the additional terms are for two years each.

C. Investment Protection After Termination

The BITs nearly always provide that, even after they are terminated, their provisions continue to apply to investment for some additional period. Obviously, the purpose of this clause is to further ensure legal stability for foreign investment. An investor who invests at the beginning of the treaty's entry into force thus is guaranteed protection for the initial term plus the additional period, even if notice of termination is given at the appropriate interval prior to the end of the initial term.

This additional period is 10 years in Lithuania's BITs with Denmark, Finland, Norway, Poland, and Switzerland and in the U.S. BITs. The additional period is for 15 years in Lithuania's BITs with France and the United Kingdom. It is for 20 years in Lithuania's BITs with Germany and Sweden. Note that this additional period is usually, but not necessarily, for the same length of time as the initial term. In the Finland BIT, the initial term is 15 years, but the additional period of coverage is only 10 years, while in the U.K. BIT the initial term is 10 years while the additional period of coverage is 15 years.

The effect of this additional period of protection, when combined with a lengthy initial term, can be significant. Under the Sweden BIT, for example, because of a 20 year initial term and an additional period of 20 years, investment in existence at the time the treaty entered into force would be protected for 40 years, even assuming that one of the parties terminated the treaty at the earliest possible date.

The additional period of protection virtually always runs from the same date -- the date on which the treaty termination takes effect -- so that the protection of all investment will end on the same date. Treaties vary, however, with respect to the date by which investment must be established in order to obtain the benefit of this additional period. Some treaties apply the additional period to all investment made prior to the notice of termination. This is the approach in Lithuania's BITs with Denmark, Norway and Switzerland. Other treaties apply the additional period to investment made prior to the actual termination of the treaty. This is the approach in Lithuania's BITs with Germany, Sweden, France, Finland, Poland and the United Kingdom and in the U.S. BITs. The latter approach is better for the investment climate because it provides investors a period after notice is given in which to make investments that will be protected during the additional period. Under the first approach, investors who may have been planning an investment for a lengthy period but who have not yet made the investment will suddenly discover, upon notice of treaty termination, that their investment will be entitled to protection for no longer than the remaining life of the treaty, generally only six months to a year.

Some BITs provide that termination of the treaty is without prejudice to an investment's protection under customary internationa law. This language appears in Lithuania's BITs with Finland and the United Kingdom. Such a provision does not seem necessary, however, because customary international law always is presumed to apply in the absence of a treaty to the contrary.

PART TWO

I. INTRODUCTION

This part analyzes twelve BITs that have been proposed to Lithuania but not yet signed. These are the BITs with the Belgo-Luxembourg Union, China, Cyprus, Hungary, Italy, Korea, Kuwait, Morocco, the Netherlands, Tunisia, Turkey, and Vietnam.

The provisions in these proposed agreements are similar to the provisions analyzed in Part One. For an explanation of any particular provision or a discussion of Lithuania's past policy with respect to a provision, reference should be made to Part One.

This part seeks to identify what is unusual or troublesome in the twelve proposed BITs. Because each agreement will be negotiated separately, the analysis generally is organized by agreement rather than by treaty provision.

Some of the treaty provisions are relatively standard in all of the proposed BITs and are discussed in this introductory section. The remainder of Part Two discusses, with respect to each treaty, provisions that tend to vary among the agreements.

A. Definition of Investment and Returns

All of the proposed BITs contain a definition of the term "investment." As in most of the BITs previously concluded by Lithuania, the proposed BITs define investment as "every kind of asset" and include an illustrative list which is remarkably similar among the various BITs, including those already in force for Lithuania.

Similarly, several of the proposed BITs include a definition of the term "returns," which varies little among the agreements and closely resembles the defintions in Lithuania's existing BITs. In the Cyprus BIT, the term "income" is used rather than "returns."

B. Investment Promotion

All of the treaties, except that with Turkey, have an investment promotion provision. Generally the treaty provides that each party "shall encourage" (or, occasionally, "shall promote") investment in its territory by investors of the other party. A few of the BITs include the additional requirement that the parties "create favorable conditions" for investment.

C. Establishment of Investment

Ten of the twelve proposed BITs have provisions on the establishment of investment, similar to those that appear in the BITs previously signed by Lithuania. In every case, the right of investors of one party to make or acquire investment in the territory of the other party is subject to the laws of the host state. The proposed BITs with the Belgo-Luxembourg Union and Cyprus do not have a provision on establishment of investment.

D. War and Civil Disturbance

All of the proposed BITs, except those with the Belgo-Luxembourg Union and Cyprus, contain a provision which guarantees to covered investors MFN treatment with respect to any compensation for losses owing to war or civil disturbances, such as riots, insurrections or revolutions. The proposed BITs with Italy, Korea, Kuwait, Morocco, the Netherlands, Tunisia, and Turkey also guarantee national treatment with respect to such compensation. Even if none of these eight BITs with national treatment ever enters into force, however, covered investors will be entitled to national treatment through the MFN clause of their BITs because, as discussed in Part One, national treatment has been guaranteed to investors under several existing BITs. Note that the Kuwait BIT requires that payments be freely transferable without delay and defines "without delay" to mean the period normally required for the completion of formalities not to exceed two months.

Several proposed BITs -- those with Hungary, Italy, Korea, Kuwait, and Morocco -- also contain provisions requiring that any such compensation be freely transferable ("promptly transferable" in the case of Morocco). Again, because several existing BITs already contain this obligation, investors under other BITs will be entitled to free transferability through the MFN clauses of their BITs.

Three BITs, with Italy, Kuwait and Morocco, are especially significant because they contain an absolute obligation to compensate covered investors for war and civil disturbance losses. The Italy BIT requires "adequate" compensation, the Kuwait BIT requires "just and adequate" compensation and the Morocco BIT requires "adequate" compensation or restitution for such losses. The term "adequate," of course, is taken from the phrase "prompt, adequate and effective compensation" and is generally understood to require payment of fair market value.

As explained in Part One, this obligation is important because, in the absence of this provision, Lithuania would be under no obligation to compensate investors for losses due to war or civil disturbance (unless the losses resulted from a violation of another BIT clause, such as the obligation to provide full protection and security to investment.) Lithuania already has obligated itself to pay adequate compensation or restitution for such losses in its BIT with the United Kingdom and thus payment to any U.K. investor would

entitled all other investors covered by BITs with MFN clauses to payment.

While the U.K. BIT constitutes a precedent, that does not mean that the issue of whether to agree to an absolute obligation to compensation is a closed matter. If it happened that a war or civil disturbance did not damage any U.K. investment, then Lithuania would not need to compensate any U.K. investors and thus it would not need to compensate any other investors under the MFN clause. Concluding more BITs with an absolute obligation to compensate only increases the probability that an investor covered by such a BIT will incur losses, requring Lithuania either to violate the BIT with that investor's country or compensate the investor and thus incur the obligation to compensate all other investors protected by a BIT with an MFN clause.

E. State-to-State Disputes

As discussed in Part One, the state-to-state disputes provisions of Lithuania's concluded BITs are very similar and differ in only minor respects, principally on the question of how the costs of arbitration are to be divided.

All of the proposed BITs follow the pattern of the BITs previously concluded. With respect to the costs of the arbitral tribunal, all of the proposed BITs, except that with Turkey, provide that each party shall pay the costs of the arbitrator it appoints, while sharing the remaining costs. The Turkey BIT provides simply that the costs of the tribunal shall be borne equally by the parties.

The principal difference among the clauses involves the amount of time allowed for the appointment of the arbitrators. The amounts allowed by these proposed BITs, generally two or three months for each round of appointments, are similar to those in the BITs already concluded by Lithuania. The Turkey BIT, like the France BIT, permits only two months for all arbitrators to be appointed.

The Belgo-Luxembourg BIT is unusual in requiring that the parties, before submitting a dispute to arbitration, submit it to a mixed commission of representatives of the two parties.

Four of the BITs contain choice of law provisions. The China BIT specifies that the tribunal shall decide in accordance with the provisions of the BIT and the principles of international law recognized by both parties. The Hungary and Cyprus BITs include a choice of law clause that requires the tribunal to decide on the basis of respect for law, including in particular the BIT, other relevant agreements and univerally acknowledged principles of international law. The Netherlands BIT provides that the tribunal shall decide on the basis of respect for law or, if the parties agree, ex aequo et bono.

The proposed Hungary BIT, like the previously concluded France BIT,

specifies as the appointing authority the Secretary-General of the United Nations, rather than the President of the International Court of Justice.

The Turkey BIT imposes a three month deadline on the tribunal's selection of its rules of procedure. If the deadline is not met, either party may ask the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure. The Turkey BIT also imposes deadlines on the conduct of arbitral proceedings and the rendering of an award. The Turkey BIT, finally, includes an novel provision with an error. Article VIII(8) states that a dispute may not be submitted under the state-to-state disputes provision if it previously was submitted to another international arbitral tribunal under article X. There is no article X, however.

F. Subrogation

All twelve proposed BITs contain a subrogation provision. These provisions follow the pattern of those in the BITs already concluded by Lithuania.

G. Entry Into Force, Duration and Termination

All twelve proposed BITs contain provisions on the treaties' entry into force, duration and termination similar to those in previously concluded BITs. All provide for entry into force for a fixed term upon notice of completion of internal or constitutional requirements. The fixed terms in the proposed BITs, as in the previously concluded BITs, range from ten to twenty years, except for the Korea BIT, which provides for an initial term of only five years. This initial term seems too short to inspire much investor confidence and should be extended to at least ten years.

All provide for termination at the end of the initial period, on either six months or one year's notice -- as in the case of Lithuania's concluded BITs. All also provide for automatic renewal at the end of the fixed term, for either an indefinite period or for additional fixed terms of ten to twenty years, again following the pattern of the BITs previously concluded by Lithuania. The Italy BIT is an exception. In that BIT, the additional fixed term is for only five years.

All of the proposed BITs provide that investment shall be protected for an additional period after termination of the treaty. These additional periods, as in Lithuania's concluded BITs, range from ten to twenty years.

II. BELGO-LUXEMBOURG UNION

A. Definition of Investor

The definition of a Belgo-Luxembourg investor, at article 1(1), is similar to the definitions that appear in Lithuania's concluded BITs. Investors include persons who are citizens under the law of Belgium or Luxembourg and companies that are constituted under the laws of Belgium or Luxembourg and that have their principal place of business in Belgium or Luxembourg. The term "investor" is not defined for Lithuania and thus a definition must be added during negotiations.

B. Definition of Territory

The Belgo-Luxembourg BIT does not define the term "territory."

C. MFN and National Treatment

The Belgo-Luxembourg BIT, at article 11, grants investors MFN treatment for all questions related to the treatment of investment. Article 3(3) states that the just and equitable treatment and the constant protection and security guaranteed by article 3(1) shall not be less than MFN treatment.

The customs union exception, at article 3(4), is confusing. It seems to exempt privileges extended by virtue of a state's participation in a customs union, free trade area, common market, or regional economic organization only from the MFN treatment under article 3(4) and not from the more general MFN obligation under article 11. This should be revised so that the customs union exception applies to article 11 as well as article 3.

The Belgo-Luxembourg BIT does not have an exception for privileges related to taxation. A provision exempting from the MFN obligation privileges extended by virtue of an international agreement relating to taxation or domestic legislation relating to taxation should be added.

D. Absolute Standards

Article 3 guarantees to investment just and equitable treatment and constant security and protection. The clause guaranteeing constant security and protection seems slightly weaker than in most BITs because it lacks modifiers such as "most" or "full." In any event, it is subject to measures taken by a state necessary to maintain the public order.

Article 3 also prohibits all unjustified or discriminatory measures that interfere

with the management, maintenance, operation, use, enjoyment or disposal of investment. Finally, it provides that the protection provided to investment shall not be less than that required by international law.

Under article 9, existing investments that are subject to an investment agreement between the investor and the host state shall be governed by the treaty and by the investment agreement. The parties also agree to observe investment agreements made in the future with investors.

E. Expropriation

The Belgo-Luxembourg BIT, at article 4(1), prohibits expropriation of investment. Article 4(2), however, permits an exception where the expropriation is justified by imperatives of public utility, security or national interest. Such an expropriation must be in accordance with legal process, nondiscriminatory, not contrary to a specific contractual engagement, and accompanied by adequate and effective compensation. Compensation must be paid in the currency of the investor's state or other convertible currency and must be paid without delay and be freely transferable. Thus, all elements of prompt, adequate and effective compensation are present. The Belgo-Luxembourt BIT also explicitly provides for interest at a normal commercial rate and guarantees MFN treatment with respect to the matters covered in the expropriation article. The exchange rate is prescribed in article 6 and discussed below under currency transfers.

F. Currency Transfers

Article 5 provides for free transfer of payments without delay and without charges other than taxes and the usual costs. It also provides for MFN treatment with respect to the guarantees contained in the currency transfers article.

Under article 6, the exchange rate shall be that applicable on the date of transfer and by virtue of the exchange regulations of the host state in force. This last phrase leaves unclear whether the host state may adopt a special exchange rate under its regulations or whether it must use the generally applicable rate. The Belgo-Luxembourg BIT goes on to require MFN treatment regarding the exchange rate and to specify that the applicable rates shall be just and equitable.

G. Investor-to-State Disputes Provision

The investor-to-state disputes provision, at article 10, applies to all disputes relating to investment. To the extent possible, such differences shall be resolved amicably between the investor and the host state and, failing that, by conciliation or diplomatic means

between the parties to the BIT.

If the dispute cannot be resolved by these means in six months, it shall be submitted to arbitration, to the exclusion of other judicial remedies. The Belgo-Luxembourg BIT contains the parties' express consent to arbitration.

The investor shall be permitted to choose among (1) arbitration by an ad hoc tribunal under the UNCITRAL Rules; (2) arbitration before ICSID, provided that Belgo-Luxembourg and Lithuania are parties to the ICSID Convention and, if not, before the Additional Facility; (3) arbitration by the Court of Arbitration of the International Chamber of Commerce in Paris; or (4) arbitration by the Arbitration Institute of the Stockholm Chamber of Commerce.

Article 10(4) provides that the host state shall not raise as an objection the fact that the investor has received compensation under an insurance agreement, a clause that appears in Lithuania's BIT with Switzerland.

The investor-to-state disputes provision, at article 10(5), contains an unhelpful choice of law clause. It provides that the tribunal shall decide based on the national law of the host state, including its conflict of law provisions, the provisions of the BIT, the terms of a specific agreement pertaining to the investment, as well as the principles of international law. As previously noted, such choice of law clauses do not provide much guidance to the tribunal concerning which of these bodies of law to apply in the event of a conflict.

The arbitral award shall be final and binding. Each party is obligated to execute the award in conformity with its national law. From the investor's perspective, this latter requirement is weak because it makes the obligation to enforce subject to local law. A better formulation would state that each party shall provide for the enforcement of the award in its territory.

H. Preservation of Rights

Under article 8, the provisions of national law and other international agreements shall prevail over the BIT to the extent that they are more favorable.

I. Applicability to Existing Investment

The Belgo-Luxembourg BIT, under article 13, applies to existing investment made in conformity with the host state's laws and regulations.

III. CHINA

A. Definition of Investor

The definition of investor, at article 1(2), is not symmetrical. Investors of China includes natural persons who are nationals of China under its law, a standard definition. Investors of Lithuania are those who are nationals and who undertake to invest in the PRC. Similarly, Lithuanian economic entities are protected only if they undertake to invest in the PRC, while Chinese companies are protected regardless of whether they undertake to invest in Lithuania. Because the treaty as a practical matter is irrelevant to any national or company of a party that does not undertake to invest in the territory of the other party, the asymmetry probably is of no significance. To avoid misinterpretation, however, it probably would be wise to make the definitions symmetrical.

There also is an ambiguity in the definition. To be a Chinese investor, a company must be established in accordance with Chinese law and domiciled in China. To be a Lithuanian investor, a company must be established in accordance with Lithuanian law and resident in Lithuania. It is unclear what the terms "domicile" and "residence" mean in this context. It also is unclear what the difference between domicile and residence is for this purpose. Perhaps these words refer to the location of the principal place of business. Or, perhaps they refer to a location where the companies have substantial business activities. The negotiators should replace these terms, which have no established meaning in international law in this context, with language that states more explicitly what is required by this clause.

B. Definition of Territory

The China BIT does not define the word "territory."

C. MFN and National Treatment

Article 3(2) of the China BIT guarantees MFN treatment for investment and associated activities. Unlike the U.S. BIT, which also protects associated activities, the China BIT has no definition of associated actitivies. Because of the importance of the term, it should be defined.

Article 3(3) of the China BIT exempts from both the MFN requirement and the absolute standards in article 3(1) preferences based on agreements establishing a customs union, free trade area or economic union. It also exempts preferences based on agreements to facilitate frontier trade.

That same article also exempts from both the MFN requirement and the absolute standards in article 3(1) preferential treatment based on agreements related to avoidance of double taxation. This is a relatively narrow exception. Lithuania may wish to broaden it to include preferences based on any treaty relating to taxation and any domestic laws relating to taxation.

D. Absolute Standards

The China BIT provides, at article 3(1), that investment and associated activities shall be accorded fair and equitable treatment and shall enjoy protection. The term "protection"is not generally used alone in this context. The more common terms are "most constant protection and security" or "full protection and security." Arguably, the China BIT provision is slightly weaker than the usual provision. In any event, using a phrase not in common usage leaves the meaning of the clause somewhat unclear.

As noted above, the China BIT exempts from these obligations preferences extended under customs union and similar agreements or a double taxation agreement.

E. Expropriation

Article 4 of the China BIT requires that expropriations be in the public interest, in accordance with domestic legal procedures, nondiscriminatory and with "proper" compensation. Proper compensation is defined to mean the market value of the investment immediately before the expropriation took place or became public knowledge, with interest from the date of expropriation. Compensation must be convertible, freely transferable and paid without "unreasonable delay." Thus, all of the elements of prompt, adequate and effective compensation are present, although the use of the term "unreasonable" to define delay perhaps weakens the element of promptness slightly.

F. Currency Transfers

Under article 5 of the China BIT, the guarantee of free transferability of investments and returns is subject to the host state's laws and regulations. From the investor's perspective, this is a very weak provision because it means that there is no right of free transferability except to the extent permitted by local law.

Transfers are to be made into a convertible currency at the prevailing exchange rate as set by the central bank of the host state on the date of transfer. This clause seems to suggest that the central bank must apply a rate that it uses for other purposes.

G. Investor-to-State Disputes

The China BIT investor-to-state disputes provision, ar article 8, applies to "disputes in connection with an investment." If such a dispute is not settled through negotiations within six months, the investor has the choice of submitting it to the courts of the host state or to ICSID, if both states are parties to the ICSID Convention. If both states are not parties to that Convention, then the investor may submit the dispute to an ad hoc tribunal constituted in the usual way, with each disputant selecting one arbitrator and the two arbitrators selecting the Chairman from a third state that maintains diplomatic relations with both China and Lithuania. The Secretary General of ICSID shall serve as appointing authority. The provision has the usual clauses authorizing the tribunal to select its own procedure, providing that awards are final and binding, and specifying that decisions shall be by a majority vote. Each party bears the costs of its representation and of the arbitrator it selects, with the remaining costs borne equally unless the tribunal directs otherwise.

Each party is required to enforce the award of the ad hoc tribunal in accordance with its own law. Thus, if a party has no law making arbitral awards enforceable, it is under no oglibation to enforce. If Lithuania wants this provision to be stronger, it should modify the language to state that each party shall provide for the enforcement of the award in its territory.

The China provision contains a rather unhelpful choice of law clause. It states that the decision of the ad hoc tribunal shall be according to host state law including its conflict of law rules, the provisions of the BIT, as well as generally recognized international legal principles. As discussed in Part One, this leaves unclear how the tribunal is to decide in the event of a conflict between the host state's law and international law.

H. Preservation of Rights

The China provision, at article 9, states that more favorable treatment under the host state's domestic law, shall prevail. The provision applies to investment and associated activities. As noted above, the term "associated activities" is not defined.

I. Applicability to Existing Investment

Under article 10, the China BIT applies to investment in China made before or after the BIT's entry into force, as long as the investments were made in conformity with China's laws and regulations. It applies to investments made in Lithuania after December 29, 1990. Investments made prior to that date are covered if they are subsequently registered.

J. Other Provisions

1. Consultations

The China BIT, at article 11, requires the parties to hold meetings from time to time to review implementation of the agreement, exchange information, resolve disputes, forward proposals on investment promotion, and study other issues in connection with investment. This language differs from most BITs, which call for consultations only upon the request of either party. Presumably, China wishes to emphasize the importance of periodic consultations by suggesting that they are required.

2. Entry and Sojourn

The China BIT, at article 2, requires each party to grant assistance in obtaining visas and work permits in connection with activities associated with investment. This provision apparently does not mean that a party must grant a visa, but only that it will expedite requests for visas to which investors are entitled under its law. This perhaps should be clarified in negotiations.

IV. CYPRUS

A. Definition of Investor

The definition of investor, at article 1(3), includes persons who are citizens under the laws of the respective states and companies established under the laws of each party.

A drafting error appears in the definition, however. It states that these entities are included in the definition "irrespective of whether their liabilities or their activities are directed at profit. . . ." The phrase "liabilities . . . directed at profit" does not make sense. A better formulation would be "irrespective of whether they have limited or unlimited liability or whether their activities are directed at profit. . . ."

B. Definition of Territory

The Cyprus BIT does not define the term "territory."

C. MFN and National Treatment

The Cyprus BIT wording, at article 3(2), is a little odd. It guarantees to investment full security and protection which shall not be less than MFN treatment. In other words, MFN treatment is a standard for measuring full security and protection, rather than an

independent requirement. The difference between this and the usual formulation is probably only semantic, although the Cyprus language arguably is narrower than where MFN treatment is set forth as an independent requirement.

The Cyprus BIT, at article 3(3), exempts from the MFN obligation special advantages under a customs union, economic union or similar institution.

Article 3(4) of the Cyprus BIT exempts from the MFN obligation taxes, fees, charges and fiscal deductions and exemptions granted by virtue of a double taxation agreement or agreement related to matters of taxation or on the basis of reciprocity. It is unclear what the reference to agreements based on reciprocity adds to the Cyprus BIT. The taxation exception applies to taxes, fees, charges and fiscal deductions and exemptions based on an agreement related to matters of taxation. If the agreement on the basis of reciprocity related to tax matters, it is already covered even without the reference to agreements on the basis of reciprocity. If it does not relate to taxation, then presumably it will not have any provisions on taxes, fees, charges or fiscal deductions and thus will not fall within this clause in any event. Perhaps the reciprocity language is meant to apply to an agreement that deals principally with non-tax matters and thus arguably was not an agreement related to matters of taxation, although it contains a few tax clauses. This should be clarified in negotations.

The Cyprus BIT does not exempt from the MFN obligation tax preferences based on domestic legislation. Lithuania should add such language during negotiations.

D. Absolute Standards

The Cyprus BIT, at article 3, guarantees to investment fair and equitable treatment and full security and protection. It prohibits the parties from impairing by unreasonable or discriminatory measures the operation, management, maintenance, use or disposal of investment.

E. Expropriation

Article 4 of the Cyprus BIT requires that expropriation be for a public purpose related to the internal needs of the host state (as in the U.K. BIT), nondiscriminatory, and accompanied by prompt, adequate and effective compensation. It goes on to state more specifically that compensation must equal the market value of the investment immediately before the expropriation measure became public knowledge, must be paid without delay including interest at LIBOR until the date of payment, and must be paid in a convertible currency that is freely transferable. The exchange rate will be the rate set by the central bank of the host state applicable on the date of transfer. This seems to imply that the central bank must apply a rate used for other transfers and cannot adopt a special rate for transfers covered by this article. This should be clarified during negotiations.

The Cyprus BIT also provides for a prompt review of the legality of the expropriation in local courts.

F. Currency Transfers

Article 5 of the Cyprus BIT guarantees that transfers of investment and income will be effected without delay in a freely convertible currency at the rate of exchange set by the central bank of the host state applicable on the date of transfer. As noted above, this seems to imply that the central bank must apply a rate used for other transfers. Lithuania may wish to clarify this point during negotiations.

The Cyprus BIT contains a proposed note that would delay implementation of the transfers provisions of the BIT pending introduction of a convertible currency in Lithuania. This apparently is no longer necessary in light of the introduction of the litas.

G. Investor-to-State Disputes

The Cyprus BIT investor-to-state disputes provision, at article 9, applies to a dispute "in connection with an investment." If the dispute is not settled within six months, the investor may submit it for arbitration under the auspices of one of three institutions: (1) the Arbitration Institute of the Chamber of Commerce in Stockholm; (2) the Court of Arbitration of the International Chamber of Commerce in Paris; or (3) ICSID.

The Cyprus BIT goes on to state, creating some confusion, that if Cyprus and Lithuania are not parties to the above conventions, then the investor may choose arbitration before a sole arbitrator or an arbitral tribunal established under the UNCITRAL Rules. The problem is that only ICSID arbitration involves an international convention. Thus, the language seems to have no application to the Stockholm Chamber of Commerce of the International Chamber of Commerce. Arguably, what this clause means is that, if both states are not parties to the ICSID Convention, then the investor may select arbitration in accordance with the UNCITRAL Rules. In any event, the meaning of the clause should be clarified.

H. Preservation of Rights

Article 7 of the Cyprus BIT provides that more favorable treatment under any host state law or international agreement shall prevail.

I. Applicability to Existing Investment

The Cyprus BIT applies to investment made prior to its entry into force.

provided that the investment was made in accordance with the host state's laws and regulations. The Cyprus BIT further provides that such investment, to be covered, must continue to be owned by the interested investors and continue to function as an ongoing concern on the date the agreement came into force. This language does not seem to serve any real purpose. For example, an investor should be able to sell the investment to another investor of the same nationality without adversely affecting the treaty protection of the investment. Yet, this language would eliminate treaty protection following sale of the investment.

J. Other Provisions

1. Consultations

The Cyprus BIT, at article 10, provides that when necessary the parties shall hold meetings to review implementation of the agreement. They shall be held on the proposal of one party at a time and place agreed by the parties.

2. Entry and Sojourn

The Cyprus BIT, at article 11, requires each party to permit, in accordance with its laws, the entrance of investors and employees involved in activities connected with investment. This provision does not require that the investor's entry be connected with his own investment. In the end, however, the entire provision is subject to the host state's own laws and thus it cannot create any obligation contrary to host state law.

3. Transport of goods and services

The Cyprus BIT, at article 11, provides that neither party shall hinder the transport agencies of the other party and, in accordance with its laws, when necessary shall issue permits for transportation of goods and persons in connection with investments. The prohibition on hindering the transport agencies of the other party may cause confusion. It is unclear, for example, whether this refers to agencies acting in a regulatory or a proprietary capacity. If the former, then it is difficult to imagine how one state could interfere with the other state's internal regulations. If the latter, then there is no apparent reason why government agencies engaged in transport should be free of hindrance while private companies are not. This clause should be clarified in negotiations. The remainder of the provision is subject to local law in any event.

V. HUNGARY

A. Definition of Investor

The definition of investor at article 1(2) is a standard one, embracing natural persons having nationality under the law of the state and legal persons constituted in accordance with the law of the state.

B. Definition of Territory

The Hungary BIT does not define the term "territory."

C. MFN and National Treatment

Article 3(2) of the Hungary BIT is similar to the Cyprus BIT in requring full security and protection which shall not be less than MFN treatment. Its exceptions for customs unions and taxation matters also are similar to those in the Cyprus BIT. Comments made above with respect to the Cyprus BIT are equally applicable here.

D. Absolute Standards

Article 3 of the Hungary BIT guarantees fair and equitable treatment and full protection and security, in no case less than that provided to the most favored nation. It also prohibits unreasonable or discriminatory measures that impair the management, operation, maintenance, use or disposal of investment.

As in the China BIT, these absolute standards of treatment are subject to the exceptions relating to customs unions and taxation matters.

E. Expropriation

The Hungary BIT requires that any expropriation be in the public interest, under due process, nondiscriminatory, not contrary to any undertaking, and accompanied by just compensation, paid and made transferable without delay. Although the language is

concise, all of the elements of prompt, adequate and effective compensation are present. The term "just compensation" generally is understood to be synonymous with adequate compensation.

F. Currency Transfers

Article 5 guarantees that payments related to an investment shall be transferred in a freely convertible currency without undue restriction and delay. It fails to specify the exchange rate.

G. Investor-to-State Disputes

The Hungary investor-to-state disputes provision, at article 10, appears to apply only to disputes concerning expropriation. Thus, for example, an investor would have no remedy under this clause for the imposition of exchange controls in violation of the currency transfers article or for denial of MFN treatment of its investment. An investor obviously would prefer a provision that applies to all disputes concerning an investment.

In the event that an expropriation dispute is not settled within six months, the investor may choose arbitration before the Stockholm Chamber of Commerce, the International Chamber of Commerce in Paris, or ICSID. ICSID arbitration is available only if both Hungary and Lithuania are parties to the ICSID Convention.

H. Preservation of Rights

Article 7 of the Hungary BIT provides that more favorable treatment under domestic law or international law shall prevail over the terms of the BIT.

I. Application to Existing Investment

Under article 2(1), the Hungary BIT applies to investment made in accordance with the host state's laws after Janauary 1, 1973.

J. Other Provisions

The Hungary BIT, at article 8, obligates each party to afford sympathetic consideration and adequate opportunities for consulations requested by the other party on any matter affecting the operation of the BIT.

VI. ITALY

A. Definition of Investor

Under article 1, natural persons are investors if they possess the nationality of a state under its law. Companies must have their seat in the territory of a party and either be recognized by it or be registered in accordance with its laws. The location of the seat is a traditional basis for ascribing nationality to a company. The additional requirement of recognition or registration could create potential problems. It is unclear what "recognized" means. Before concluding this agreement, the parties should make certain that a process of "recognizing" or "registering" companies exists in both states.

B Definition of Territory

The definition of territory, at article 1(6), is a typical one which includes maritime and submarine zones over which the parties exercise sovereign rights or jurisdiction under international law.

C. MFN and National Treatment

Article 3 of the Italy BIT guarantees both MFN and national treatment to "investment and income." It also requires MFN and national treatment for "activities connected with the investment" but does not define these activities. Activities connected with investments is not unlike the associated activities protected by the U.S. BITs. The term should be defined. Paragraph 1 of the Protocol extends MFN and national treatment to certain additional activities.

The customs union exception in the Italy BIT is quite broad. It covers customs unions, economic unions, common markets, and free trade agreements -- all of which commonly appear in such exceptions. It goes on to include, however, regional or subregional agreements (apparently of any character whatsover) as well as any international multilateral economic agreement or agreement to facilitate cross-border trade.

The tax exception on the other hand is narrow and applies only to agreements to prevent double taxation. Lithuania should broaden this to include other agreements relating to taxation as well as domestic legislation relating to taxation.

D. Absolute Standards

Article 2(2) of the Italy BIT guarantees just and fair treatment to investment and requires the parties to ensure that the management, maintenance, use, enjoyment or assignment of investment are not subject to unjustified or discriminatory measures.

E. Expropriation

Article 5 of the Italy BIT prohibits expropriation unless it is for a public purpose in the national interests of the state, nondiscriminatory, in conformity with statutory procedures, and accompanied by "immediate, adequate compensation." Adequate compensation is defined as just compensation based on the real market value of the investment immediately prior to the public announcement of the expropriation. The value is to be derived using internationally recognized evaluation standards, a provision not in any prior Lithuanian BIT. Interest is to be paid at LIBOR from the date of expropriation until the date of payment. Compensation is to be paid promptly and authorization for its repatriation issued.

Transfer into a convertible currency at the prevailing exchange rate or, if one exists, the official exchange rate is guaranteed by article 8(1). It appears that a word is missing from this provision, however, leaving its meaning potentially unclear.

The Italy BIT has a novel requirement that, if after expropriation the property has not been used wholly or partially for the purpose for which it was taken, the owner is entitled to repurchase the property at the market price.

F. Currency Transfers

Article 6 of the Italy BIT guarantees transfer withour further delay in any convertible currency of certain listed types of payments. As in some of Lithuania's BITs, the list of payments covered by the tranfers article of the Italy BIT appears to be exclusive. Investors, or course, would be entitled to the benefit of broader transfers articles in other BITs under the MFN clause of the Italy BIT.

Article 8(1) further explains that transfers shall be effected without undue delay

and, at all events, within one month after all fiscal obligations have been met. The phrase "after all fiscal obligations have been met" is defined to mean that the investor has carried out all formal procedures. The term "fiscal obligations" generally refers to the payment of taxes. It is not clear in the Italy BIT whether the sentence defining fiscal obligations means to say that meeting fiscal obligations refers to carrying out formal procedures and not the payment of taxes or whether it refers to carrying out formal procedures in addition to the payment of taxes. This should be clarified. As noted above, the exchange rate to be used is potentially unclear because of omitted words.

Paragraph 2 of the protocol specifies that transfers shall be made in the currency in which the investment was made or in any other freely convertible currency as agreed by the investor and the host state. This language, however, appears to apply only to Lithuania.

G. Investor-to-State Disputes

The investor-to-state disputes provision, article 9, applies to disputes "on investments." If a dispute is not settled within six months, the investor may submit it to the courts of the host state, an ad hoc tribunal using the UNCITRAL Rules, or ICSID, if both states are parties to the ICSID Convention.

Paragraph 3 of the protocol contains additional provisions applicable to UNCITRAL arbitration. It designates the President of the Arbitration Institute of the Stockholm Chamber of Commerce as the appointing authority and requires that the arbitration take place in Stockholm unless the parties agree otherwise. This is important because, as explained in Part One, tribunals sometimes will look to the law of the arbitration site particularly on procedural matters and the location of the arbitration affects the award's enforceability under the New York Convention. The protocol also contains a choice of law clause for arbitration under the UNCITRAL Rules. It specifies that the tribunal shall apply the provisions of the BIT and the principles of international law recognized by the parties. Thus, the Italy BIT choice of law provision refers exclusively to international law.

The protocol also provides that the recognition and implementation (presumably meaning "enforcement") shall be governed by the parties' national legislation in compliance with the relevant international conventions to which they have adhered. Because it is subordinate to local law, this language does not actually require a party to enforce an award, except to the extent already required by another international agreement. The language is not meaningless, however, because a failure to enforce an award in compliance with an international agreement would violate the BIT, allowing the investor's state to invoke the state-to-state disputes procedure.

Article 9(3) provides that the parties shall refrain form negotiating through

diplomatic channels any matter relating to arbitral or judicial proceedings underway until the proceeding has been terminated and the host state has failed to comply with the decision. A similar provision appears in the Germany and Switzerland BITs.

H. Preservation of Rights

Article 12 provides that more favorable treatment under domestic laws, international law or specific contracts shall prevail.

I. Application to Existing Investment

The Italy BIT does not state whether it applies to existing investment. In the absence of any language excluding existing investment, the BIT presumably would be applied to such investment, but this issue should be clarified during negotiations.

J. Other Provisions

1. Consultations

Under article 14, either party may propose consultations on any matter affecting the application of the BIT, to be held at a time and place agreed by the parties.

2. Entry and Sojourn

Under paragraph 1 of the protocol, each party shall govern, as favorably as possible according to its laws, problems connected with entry, work and movement in its territory by nationals of the other party related to investment. The provision does not make clear whether the investment must be investment covered by this treaty or whether the provision applies to nationals of the other party entering the territory in connection with investment of nationals of a third state. In any event, the provision is subject to local law.

3. Diplomatic and Consular Relations

Article 11 provides that the agreement applies irrespective of whether the parties have diplomatic or consular relations.

4. Amendment

Under article 13, the BIT may be amended by agreement of the parties. The amendment will enter into force when the parties notify each ofther that any constitutional requirements have been fulfilled.

VII. KOREA

A. Definition of Investor

The definition of investor, at article 1(3), is very standard. Persons must be nationals under the law of a party, while companies must be constituted in accordance with a party's law.

B. Definition of Territory

The definition of territory at article 1(4) arguably is slightly more limited than has become common. Maritime areas are limited to those over which the state exercises in accordance with international law sovereign rights for the purpose of exploration for or exploitation of natural resources. Most definitions include maritime zones over which the state exercises any sovereign right, not merely that related to natural resources.

There are two possible interpretations of this definition. Under one interpretation, because the exclusive economic zone (EEZ), which extends 200 miles from the coast, is an area over which states may exercise sovereign rights to explore and exploit natural resources, all investments in the EEZ would be considered investments in the state's territory, even if those investments are unrelated to natural resources. This would seem to be the more likely interpretation.

A second interpretation might be that only investments in the EEZ related to natural resources are considered investments in the host state's territory. The effect of this interpretation may be to exclude a few offshore investments, if any exist, that are unrelated to natural resources, such as an artificial island in the EEZ used for radio broadcasting. This interpretation seems strained and, even if it were adopted, as a practical matter there might never be any offshore investment unrelated to natural resources. Further, assuming that such investment existed, the host state may not want it to be covered. If the broadest possible definition of territory is desirable, however, then a definition that does not limit sovereign rights to those involving natural resources would be preferable.

C. MFN and National Treatment

Article 3 of the Korea BIT guarantees MFN and national treatment to investment and returns. It also grants investors MFN and national treatment with respect to the management, use, enjoyment and disposal of investments.

The customs union exception, at article 7(a), is quite broad. It applies to customs unions, free trade areas, common external tariff areas, monetary unions, similar international agreements including organizations for mutual economic assistance or other forms of regional cooperation.

The tax exception, at article 7(b), is the common provision which exempts privileges deriving from agreements relating wholly or mainly to taxation or domestic legislation relating wholly or mainly to taxation.

D. Absolute Standards

The Korea BIT guarantees fair and equitable treatment in three different provisions. In article 2(2) it guarantees such treatment to investment. In article 3(1) it guarantees such treatment to investments and returns. Finally, in article 3(2) it guarantees such treatment to investors as regards the management, use, enjoyment and disposal of investment. The Korea BIT also obligates the parties to provide investment with full protection and security at article 2(2).

E. Expropriation

Under article 5, expropriation must be for a public purpose, nondiscriminatory, in accordance with legal procedures and accompanied by compensation. Compensation must be "effective, adequate and be paid without undue delay." More specifically, it must be the market value of the investment immediately before the expropriation occurred or became public knowledge and must be freely transferable. Thus, all of the elements of the prompt, adequate and effective compensation are present.

The Korea BIT provides for prompt review by the host state's judicial authorities of the expropriation and valuation.

An additional provision, at article 5(4), states that these requirements with respect to expropriation apply to assets of a company that is consituted under the host state laws and in which investors of the other party own shares. Because investment is defined to include interests in a company, share in a company of the host state owned by nationals or companies of the other state would be "investment" and the expropriation of this investment would be covered by the expropriation article in any event. Thus, although many BITs have a provision comparable to article 5(4), it is not strictly necessary and generally is included out of an abundance of caution.

F. Currency Transfers

The currency transfers article of the Korea BIT, article 6, is not particularly strong from the investor's perspective. It guarantees unrestricted transfer in a convertible currency of proceeds connected with the investment, but subject to the right of the host state to exercise equitably and in good faith powers conferred by its laws and consistent with its obligations as an IMF member. That is, the right of free transferability exists only to the extent provided for in local law and under the IMF articles of agreement. The only significance to this provision thus is that a host state's failure to comply with its IMF obligations would violate the BIT as well as the IMF Agreement and would permit the investor's state to invoke the state-to-state arbitration provision of the BIT.

G. Investor-to-State Disputes

The Korea BIT investor-to-state disputes provision, article 9, applies to "any dispute" apparently without regard to whether it involves investment or the substantive provisions of the BIT. This language is perhaps not as broad as it may at first seem because, as discussed below, the Korea BIT provides solely for ICSID arbitration. The ICSID Convention itself limits the types of disputes that ICSID may arbitrate and thus, as a practical matter, the investor-to-state disputes provision will not be open to any type of dispute. Lithuania nevertheless should consider limiting this provision to apply only to disputes involving investment or disputes involving the BIT.

If not settled within six months, disputes may be submitted by either disputant to ICSID. As discussed in Part One, the language permitting the host state to submit the dispute to ICSID may not accomplish its intended effect. Because the investor is not a party to the BIT, the BIT technically does not bind the investor. Thus, the investor is not legally obligated to arbitrate a dispute submitted by the host state to ICSID.

The final clause of the investor-to-state disputes provision is very confusing. After providing that either party may submit the dispute to ICSID, it states that "[u]ntil that moment the dispute shall be submitted to conciliation or arbitration procedure to be mutually agreed upon on the basis of the [ICSID] Convention." This seems to suggest that, prior to resort to ICSID, the parties should seek some other mutually agreed arbitration or conciliation proceeding somehow patterned after ICSID. Assuming that they accomplish this, there would seem to be no reason to resort to ICSID. Thus, perhaps this clause is meant to suggest that ICSID is to be used only in the event that the parties cannot agree on another method of dispute resolution. The meaning of this clause should be clarified.

H. Preservation of Rights

The Korea BIT has no provision concerning more favorable treatment provided by other laws or agreements.

I. Application to Existing Investment

The Korea BIT states that it applies to investment made after the treaty's entry into force. Thus, it does not appear to apply to existing investment.

J. Other Provisions

I. Judicial Access

Under article 9(2), the Korea BIT guarantees MFN and national treatment with respect to legal remedies available to covered investors in local courts.

2. Amendments

Article 12 of the Korea BIT provides that it may be revised by mutual consent, but that any revision or termination shall be effected without prejudice to rights accorded prior to the effective date.

VIII. KUWAIT

A. Definition of Investors

The definition of investors has the same asymmetry as that in the China BIT. Lithuanian individuals are considered investors only if they intend to invest in Kuwait, but no similar requirement exists with respect to Chinese individuals. As discussed with respect to the China BIT, the asymmetry probably has no practical importance but it could cause confusion.

Note that Kuwaiti investors include entities owned by the government of Kuwait. The agreement does not yet specify whether entities owned by the Lithuanian government shall be considered Lithuanian companies. Most BITs are silent concerning whether government owned entities are investors, although their definitions of the term "investors" usually are broad enough to support the conclusion that government owned entities are included..

B. Definition of Territory

The definition of territory, at article 1(6), is similar to that in the Korea BIT, although the Korea BIT expressly includes the territorial sea, which the Kuwait BIT does not mention explicitly.

C. MFN and National Treatment

Article 3(1) of the Kuwait BIT guarantees MFN treatment to investment and activity connected with investment. The term "activity" is defined in article 1(7) and includes the acquisition of property of all kinds. Article 3(2) of the Kuwait BIT guarantees to investors MFN treatment with respect to the management, maintenance, use, enjoyment, acquisition and disposal of their investment.

The customs union exception, at article 4, applies to preferences resulting from customs unions, economic unions, organizations for mutual economic assistance, free trade areas, common external tariff areas, monetary unions, similar international agreements or other forms of regional or sub-regional cooperation arrangements.

The Kuwait BIT also exempts from MFN and national treatment preferences resulting for international agreements relating wholly or mainly to taxation or movement of capital or any domestic legislation relating wholly or mainly to taxation. The reference to agreements relating to the movement of capital does not appear in other Lithuanian BITs.

D. Absolute Standards

The Kuwait BIT, at article 2(1), guarantees to investment fair and equitable treatment, and full protection and security. The protocol adds, at paragraph 1(a), the statement that investment made in accordance with the host state's laws and regulations shall enjoy full protection. The protocol provision is confusing because it seems simply to repeat what was in the text at article 6(1). The protocol language, however, includes the additional proviso that the investment must have been established in accordance with the host state's laws and regulations, but no such express condition limits the provision in article 6(1). The relationship between these two provisions should be clarified.

Article 2(2) of the Kuwait BIT prohibits the parties from impairing by arbitrary or discriminatory measures the management, maintenance, use or enjoyment of investment or other activities connected with investment. Because such activity is defined to include establishing investment, this provision would seem to prohibit discrimination with respect to

the right to establish investment, which would be contradictory to Lithuanian laws prohibiting foreign investment in certain sectors of the economy.

The protocol, at paragraph 1(e), excludes from arbitrary or discriminatory measures those taken for public security, order, health or morality. It also lists specific measures that are to be considered arbitrary or discriminatory.

Finally, article 12(2) adds the further requirement that each party shall observe any obligation it has entered into with regard to investments.

E. Expropriation

The Kuwait BIT has very extensive provisions on expropriation. Article 6(2) prohibits sequestration, confiscation or similar measures unless in accordance with due process. This presumably includes all expropriations.

A separate provision, article 7, requires that expropriations be for a public purpose in the national interest, nondiscriminatory, in accordance with domestic laws, not contrary to any undertaking given to the investor, and accompanied by prompt, adequate and just compensation. Paragraph 2 of the protocol contains a list of measures that shall be considered to constitute an expropriation.

The Kuwait BIT specifies that compensation shall be the fair market value of the investment at, or immediately prior to, the date the expropriation became known. Fair market value shall be determined in accordance with recognized principles of valuation, a requirement that also appears in the Italy BIT. The Kuwait BIT goes on to list various factors that shall be taken into account in determining the value of the investment when market value cannot be readily ascertained using recognized principles.

The Kuwait BIT departs from the norm in specifying that interest shall be paid beginning two months from the date of expropriation, the assumption being that interest is due only in the event of a delay and payment in less than two months does not constitute a delay. Indeed, paragraph 3(a) of the protocol explicitly provides that the requirement imposed by the phrase "without delay" is fulfilled if transfer is made within such period as is normallly required for the completion of formalities, not to exceed two months. Interest is to be paid at the "LIBOR rate normal commercial rate," which appears to be an error. It should specify either LIBOR or a normal commercial rate.

Compensation is to be paid promptly in a freely convertible currency and allowed to be freely transferable without delay. Thus, all elements of prompt, adequate and effective compensation are present.

The Kuwait BIT has a provision at article 7(1)(c), similar to that in the Korea

BIT, which states that an expropriation of a company established under the laws of the host state but in which investors of the other state own shares or interests must be accompanied by compensation in accordance with this article. As noted with respect to the Korea BIT, this provision probably is unnecessary, although it appears in many BITs..

Finally, the Kuwait BIT, at article 7(3), guarantees to investors MFN treatment with respect to the matters covered in the expropriation article.

F. Currency Transfers

Article 8 guarantees transfer without delay in any freely convertible currency of certain enumerated transfers. Thus, the list of transfers is exclusive rather than merely illustrative. The transfers article contains a specific requirement of MFN treatment with respect to transfers, in addition to the general MFN treatment obligation of this BIT. The rate of exchange shall be the official rate of exchange on the date of transer unless otherwise agreed by the investor.

Paragraph 3(a) of the protocol defines the phrase "without delay" to mean such period as is normally required for completion of formalities, not to exceed two months.

Paragraph 4 of the protocol requires the host state to maintain sufficient foreign exchange for certain listed transfers, such as tranfers of liquidation proceeds or expropriation compensation. The list in many respects is similar to that in article 8, but they are not identical. This approach illustrates one of the undesirable features of the Kuwait BIT. Specifically, the Kuwait BIT has an extensive protocol that frequently deals with matters covered in the principal text. As a general matter, it is preferable not to treat the same matters extensively in two different portions of the treaty because of the potential for confusion.

G. Investor-to-State Disputes Provision

The Kuwait BIT investor-to-state disputes provision, at article 10, appears initially to apply to all disputes concerning investments and, indeed, does state that all such disputes shall be settled amicably. The remainder of the provision, however, applies more narrowly. Specifically, the only disputes which are subject to binding arbitration under this provision are those involving expropriation or losses attributable to war or civil disturbance. Arguably, disputes involving currency transfers also are subject to binding arbitration, but the language is unclear on this issue.

Investment disputes not involving expropriation or losses caused by war or civil disturbance are to be submitted to previously-agreed disputes procedures. This clause adds

only limited protection, however. If such disputes procedures already have been agreed upon, then the obligation to use them exists apart from the BIT. If dispute settlement procedures have not been agreed upon, then, except in the case of expropriation or losses attributable to war or civil disturbance, the BIT provides the investor with no remedy. The clause does have one consequence. If the host state refused to adhere to previously-agreed procedures, that refusal would violate the BIT, permitting the investor's own state to seek a remedy against the host state under the state-to-state disputes provision.

The Kuwait BIT specifies that, if Kuwait and Lithuania are parties to the ICSID Convention, then the dispute shall be submitted to ICSID. If they are not parties, then it shall be submitted to an ad hoc tribunal.

The Kuwait BIT has detailed language concerning the functioning of the ad hoc tribunal. Among the provisions applicable to ad hoc arbitration, but not arbitration before ICSID, are the following:

-- The selection of arbitrators is to be carried out in the usual manner, with the Chairman of the Arbitration Institute of the Stockholm Chamber of Commerce as the appointing authority.

-- The tribunal is to sit in Sweden. This is of some significance for reasons discussed in connection with the Italy BIT.

-- The Kuwait BIT has typical language specifying that the tribunal shall decide by majority vote and its award shall be final and binding. It also contains language stating that the award shall be enforced by both parties to the dispute. This is confusing, inasmuch as it is unclear how the investor can enforce the award. Perhaps this language means that both parties shall comply with the award or that the state that is a party to the dispute shall ensure the enforceability of the award in its territory. The language simply is unclear.

-- The tribunal is to decide based on the domestic laws, including the choice of law principles, of the host state as well as the provisions of the BIT and the principles of international law generally recognized. As noted in connection with the China BIT, this type of clause leaves unclear which body of law will be applied in the event that national and international law conflict.

-- The Kuwait BIT does not specify the procedural rules to be followed by the ad hoc tribunal. Under customary international law, however, arbitral tribunals have inherent authority to adopt rules of procedure.

The Kuwait BIT has a novel provision stating that "in any proceeding" concerning an investment dispute, Kuwait and Lithuania waive their right of sovereign immunity. The language of this clause is sufficiently broad that it would appear to waive Lithuania's sovereign immunity with respect to litigation before any court anywhere in the world, as long

as the dispute concerned investment. No BIT signed by Lithuania thus far has contained such a broad waiver. Indeed, most BITs contain no express waiver of sovereign immunity, although an agreement to arbitrate generally is regarded as an implied waiver of sovereign immunity with respect to the arbitral proceeding. Lithuania should consider carefully whether it wishes to give a waiver as broad as this one.

In this connection, note that a sovereign generally is immune to a court's jurisdiction, and its property is immune to seizure in execution of a judgment. The waiver in the Kuwait BIT may be construed only as a waiver of immunity to jurisdiction. Even with the waiver, Lithuania's property may still be immune to seizure because there is no express waiver of that immunity. In many states, of course, even without a waiver certain types of property will be considered not to have immunity from seizure in satisfaction of a judgment.

Article 10(5) of the Kuwait BIT provides, as does the Switzerland BIT with Lithuania and the U.S. BITs, that an investor's receipt of an indemnity shall not constitute a defense to the host state's responsibility. It goes on to state, however, that the investor shall not be entitled to compensation for more than the value of affected assets "taking into account all sources of compensation within the territory" of the host state.

Such a clause can have either of two purposes. One purpose is to ensure that the investor does not obtain a double recovery, one from an insurer and one from the host state. The Kuwait BIT seems not to be concerned about that problem, because the statement that indemnity from a third party shall not constitute a defense seems to contemplate that a double recovery could occur. If this is the intent of the clause, the language quoted above should be replaced with language stating: "provided that the investor shall not be entitled to compensation for more than the value of affected assets, taking into account all sources whatsoever."

The second purpose is narrower -- it is to prevent a double recovery from sources within the host state without limiting recovery from sources outside the host state. Thus, if the investor has insurance from a company within the territory of the host state, any recovery from that company would reduce the responsibility of the host state government. Because the Kuwait provision explicitly states that the limit on compensation is calculated taking into account all sources within the territory of the host state, it would appear that the Kuwait provision is intended to accomplish this second purpose -- to permit only a single recovery from sources within the territory of the host state, while not limiting recovery from extraterritorial sources. This is not entirely clear, however. If such is the purpose, the quoted language might better read "provided that the investor shall not be entitled to compensation, from sources within the territory of the state liable for compensation, for more than the value of the affected assets." As it is currently worded, the clause is ambiguous. Lithuania should clarify the intent and then adopt one of the suggested formulations to eliminate the ambiguity.

Finally, the Kuwait BIT contains language, at article 10(6), prohibiting the investor's state from taking to arbitration under the state-to-state disputes provision a dispute already

submitted to arbitration by the investor, unless the proceedings have terminated and the host state has failed to abide by the award. A similar provision appears in Switzerland's BIT with Lithuania and in the U.S. BITs.

H. Preservation of Rights

Article 12(1) of the Kuwait BIT provides that more favorable treatment under domestic law or international agreements shall prevail over the BIT.

I. Application to Existing Investment

The Kuwait BIT language at article 13(2) is garbled and impossible to understand.

J. Other Provisions

1. Relationship Between Investment and Investors

The Kuwait BIT, like the U.S. BITs, provides at article 1(1) that investment in the territory of one party is that owned or controlled directly or indirectly by an investor of the other party. Further, article 1(4) states that "own or control" means ownership or control exercised through subsidiaries or affiliates wherever located.

2. Right of Establishment

Article 2(1) of the Kuwait BIT seems to create an absolute right to establish investment. It provides that either party "shall, in applying its laws, regulations, administrative practices and procedures, permit . . . investment to be established and acquired in its territory. In other words, each party must apply its laws so as to guarantee the right to establish investment apparently without exception. Lithuania has not granted to any country an absolute right of establishment. This goes beyond even the U.S. BIT, which provides for national treatment with respect to the right of establishment subject to the annex. Given its laws regarding foreign investment, Lithuania should not agree to this provision.

Another provision in the Kuwait BIT related to the establishment of investment appears at article 2(7). It requires the parties to facilitate the formation of appropriate joint legal entites between investors of the parties to establish investment in

accordance with the laws and regulations of the host state.

3. Consultations

Under article 2(6), the parties shall arrange periodic consultations regarding investment opportunities in their respective territories to determine where investments from the other party may be most beneficial.

4. Entry and Sojourn

Under article 2(8) of the Kuwait BIT, each party shall made available all necessary facilities including the issuance of visas to top managerial personnel and technical personnel. This obligation, however, is subject to the host state's laws and regulations.

Under paragraph 1(c) of the Protocol, each party shall give sympathetic consideration to applications for entry or sojourn as temporary residents in connection with investments. This provision, however, is subject to local law.

5. Employment

Under article 2(8), investors are permitted to engage the top managerial and technical personnel of their choice, regardless of nationality, but only to the extent permitted by the laws of the host state. This provision is modelled after a provison in the U.S. BIT, although the U.S. provision is subject only to immigration laws, not all local laws. Because the Kuwait provision is subject to all local laws, it adds very little to the treaty.

6. Performance Requirements

The Kuwait BIT, at article 2(9), provides that investment, once established, shall not be subject to performance requirements which hinder their expansion or maintenance. U.S. BITs also have a prohibition on performance requirements. In the U.S. treaties, however, the prohibition on performance requirements precludes their use as a condition of establishment or maintenance of an investment. In the Kuwait BIT, the prohibition applies only after the investment is established. Arguably the provision of the Kuwait BIT granting investors an absolute right to establish investment would preclude performance requirements as a condition of establishment. To date, Lithuania has not concluded an agreement with a performance requirement prohibition.

7. Competitive Equality

Under article 2(11), the Kuwait BIT states that each party should maintain conditions of competitive equality when an investment owned or controlled by itself or its agencies or instrumentalities is in competition in its territory with privately owned investment by investors by the other party. In effect, this provision calls upon the host state not to discriminate in favor of state-owned enterprises when they are in competition with privately owned covered investment. Note that the Kuwait provision says competitive equality "should" be maintained and avoids the mandatory "shall." The Kuwait BIT provision is closely patterned after a similar provision in the U.S. BITs, although the U.S. provision is mandatory. To date, Lithuania has not concluded an agreement with a competitive equality provision.

8. Judicial Access

The Kuwait BIT, at article 2(10), requires each party to provide effective means of asserting claims and enforcing rights with respect to investment agreements, investment authorizations, and properties. Each party also shall grant to investors the right of access to its courts and all other bodies exercising adjudicatory authority. Finally, investors shall have the right to employ persons of their choice, who are qualified under applicable laws and regulations, for purpose of asserting claims and enforcing rights with respect to investment. That is, investors may employ persons such as attorneys and accountants to assist in litigation, provided that such persons are qualified under local law to perform the service to be rendered.

This provision is modelled after language that is standard in U.S. BITs. The more recent U.S. BITs, however, no longer continue to refer to the employment of persons to assist with claims. To date, Lithuania has not concluded a BIT with this provision.

9. Diplomatic and Consular Relations

Article 13(1) provides that the BIT shall apply irrespective of the existence of diplomatic and consular relations. Article 14(1) is identical. Obviously, there is no need to include the same provision twice.

10. Transportation

Under paragraph 1(d) of the protocol, neither party shall hinder or forbid transportation of goods or passengers related to an investment. It is unclear whether this provision is subject to the host state's customs and immigration laws. This should be clarified. Presumably, Lithuania does not mean to waive its customs and immigration regulations.

IX. MOROCCO

A. Definition of Investor

The definition of investor, at article 1(c), is standard in substance. Individuals must be nationals under the law of their states. A Lithuanian company is one constituted under Lithuanian law, while a Moroccan company is one "deriving its status" from Moroccan law. The quoted phrase perhaps should be clarified, although it presumably means much the same thing as "constituted under."

B. Definition of Territory

The definition of territory at article 1(d) is more limited than in some BITs. It includes martimes areas over which a state under its law may exercise rights with regard to the seabed and subsoil. As explained with respect to the Korea BIT, a reference to any sovereign rights or jurisdiction would be clearer and perhaps technically broader, although, like the Korea BIT definition, this definition is likely to be interpreted to include the entire EEZ and thus is probably sufficient.

The definition also includes areas to which the treaty is extended under article 12. This is language that appears in the U.K. BITs because the United Kingdom reserves the prerogative to decide later whether to apply the treaty to some of its overseas possessions, such as the Isle of Man. The draft given by Morocco to Lithuania obviously is based on the U.K. BIT. This language does not apply to Lithuania's situation and should be deleted.

C. MFN and National Treatment

Article 3 of the Morocco BIT guarantees MFN and national treatment to investment and returns. Investors also are guaranteed MFN and national treatment with respect to the management, maintenance, use, enjoyment or disposal of investment. At article 4, the treaty contains an exception to these requirements for government aid reserved for the state's own nationals in the context of national development programs and activities.

The customs union exception, at article 4, applies to preferences for customs unions or similar international agreements. Because the word "similar" is vague, Lithuania may wish to include explicitly any specific types of agreements to which it might adhere, such as an agreement for a free trade area or an agreement establishing an arrangement that includes a customs union or free trade area.

The taxation exception, at article 4, is the standard exception that applies to preferences by virtue of international agreements relating wholly or mainly to taxation or

domestic legislation relating wholly or mainly to taxation.

D. Absolute Standards

The Morocco BIT is comprehensive and straightforward. Article 2(2) requires each party to provide investment with fair and equitable treatment and full protection and security and to observe any obligation with regard to investment. It prohibits impairment by arbitrary or discriminatory measures of the management, maintenance, use, enjoyment, or disposal of investment.

E. Expropriation

Under article 6(1) of the Morocco BIT, expropriations must be for a public purpose, nondiscriminatory and accompanied by "fair and equitable compensation." Initially, it might appear that fair and equitable meant something less than market value. The Morocco BIT, however, goes on to state that compensation shall represent the real value of the investment immediately before measures were taken or became public. The only relevance of public knowledge of a planned expropriation is that such knowledge affects the market value of an investment. Public knowledge has no impact on nonmarket value measures, such as book value or the replacement cost of the tangible assets. Thus, the Morocco BIT appears implicitly to accept market value, even if not explicitly.

The Morocco BIT also specifies that compensation shall be effectively realizable, transferable and paid promptly -- within three months, at the latest. Thus, all elements of the prompt, adequate and effective compensation requirement are at least implicitly present.

The Morocco BIT, at article 6(1), grants investors the right to prompt review of the expropriation and of any compensation by local courts.

Under article 6(2), the expropriation of shares owned by investors of the other state in a company of the host state is governed by article 6(2). This provision is similar to language in the Korea and Kuwait BITs which, as noted above, is not strictly necessary.

F. Currency Transfers

Article 7 guarantees transfers of investments and returns promptly in a convertible currency at the rate of exchange applicable on the date of transfer pursuant to exchange regulations in force. This seems to imply that the rate must be that generally used

for other transfers and that the host state cannot adopt regulations creating a special rate for covered transfers. This perhaps should be clarified in negotations.

The Morocco BIT contains an escape clause that appears in some U.S. BITs, but that has not yet appeared in any of Lithuania's BITs. It provides that in exceptional financial or economic circumstances, including exceptional balance of payment difficulties, the host state may for a limited period exercise equitably and in good faith powers conferred by its laws. That is, the host state may delay transfers. Two conditions limit this escape clause. First, it does not apply to sale or liquidation proceeds. Second, in any event the host state must allow transfer of 20% of the requested amount each year. It appears that these are two separate limitations, although their inclusion in the same sentence is confusing.

G. Investor-to-State Disputes

The investor-to-state disputes provision, at article 10, applies to any dispute concerning investment. Once the investor consents to arbitration, either party may submit the dispute to ICSID for arbitration or conciliation. If the parties cannot agree on whether to pursue arbitration or conciliation, the investor shall decide.

The Morocco BIT has three other clauses that appear in some of Lithuania's BITs and that were discussed in Part One. The first is a clause on company nationality under article 25(2)(b) of the ICSID Convention. The second provides that the receipt of an indemnity from a third party shall not constitute a defense to the host state's responsibility. The third precludes the investor's state from submitting to arbitration a dispute previously submitted by the investor to ICSID unless there has been an award and the host state failed to comply. This last provision is not strictly necessary since the same prohibition is contained in the ICSID Convention.

H. Preservation of Rights

Article 2(3) of the Morocco BIT provides that more favorable treatment under a "particular undertaking" shall prevail. It is not entirely clearly whether this includes treaties as well as agreements between the investor and the host state. This should be clarified.

I. Application to Existing Investment

Under article 13, the Morocco BIT applies to investment made in accordance

with the host state's laws before the treaty enters into force, with one exception. The article on free transfers applies to previously existing investment only insofar as the investment was made in a convertible currency. The Morocco BIT further states that investments not made in a convertible currency "shall benefit from the provisions of the exchange regulations related to investment." This last provision is very unclear. Presumably, the term "exchange regulations" refers to the host state's law on currency exchange. If so, then all this provision really says is that investments not made in a convertible currency may be transferred subject to the host state's laws and regulations. This should be clarified.

J. Other Provisions

The Morocco BIT provides, at article 8, that each party may continue to grant guarantees of foreign investment against such risks as it thinks fit. This would seem obvious. It is not clear what concern prompts Morocco to insert this provision or why the provision is necessary.

X. NETHERLANDS

A. Definition of Investors

The definition of Lithuanian investors, at article 1(b), is unusual. It includes natural persons having Lithuanian citizenship under its laws and "personal entities acting as natural persons." This last phrase does not appear in any other Lithuanian treaty and is not entirely clear in its meaning. Perhaps it is a reference to sole proprietorships, that is, businesses owned by a single individual and not possessing separate legal personality. Sole proprietorships normally would be treated as nationals under these treaties because they do not have legal existence separate from their owners. If this is not a reference to sole proprietorships, then it is not at all clear what the phrase does include. The phrase probably should be made clearer. Further, if this phrase refers to a category of Lithuanian entities not otherwise protected by the BIT, then perhaps the definition in other BITs should be changed to include this group as well. More likely, it refers to entities that would be protected even if the phrase were deleted.

The nationality of entities is based on the place of incorporation or the nationality of those who own or control the investment.

B. Definition of Territory

This definition, at article 1(c), is a relatively standard broad definition,

including all maritime areas over which the state exercises sovereign rights or jurisdiction.

Article 14(1) states that, for the Netherlands, the treaty also applies to the Netherlands Antilles and Aruba, unless the notice in article 14(1) is given. This obviously is an error. Perhaps the treaty is supposed to refer at this point to article 15(4).

C. MFN and National Treatment

Like the Cyprus and Hungary BITs, the Netherlands BIT, at article 3(2), provides for full physical security and protection which in no case shall be less than MFN or national treatment. It is perhaps narrower than those agreements because the word security is qualified by the word "physical."

The customs union exception, at article 3(3), applies to customs unions, economic unions, monetary unions, or "similar" institutions.

The Netherlands BIT is unique in that it specifically provides, at article 4, that investment shall receive MFN and national treatment regarding taxation, except for special advantages under agreements for double taxation or on the basis of reciprocity with a third state. Lithuania should amend this language to include all agreements relating wholly or mainly to taxation and domestic legislation relating wholly or mainly to taxation.

D. Absolute Standards

Article 3 of the Netherlands BIT guarantees to investment fair and equitable treatment and full physical security and protection, in no case less than MFN or national treatment. As discussed above, the qualifier "physical" is unusual but not unique in BIT practice. Its presence may narrow the protection to some extent. The Netherlands BIT also requires each party to observe any obligation it may have entered into with regard to investment and prohibits the parties from impairing by unreasonable or discriminatory measures the management, maintenance, operation, use, enjoyment or disposal of investment.

E. Expropriation

The Netherlands BIT, at article 6, requires that expropriation be in the public interest and, under due process. It also appears to prohibit expropriations which are discriminatory or contrary to any undertaking given by the host state, but the language is garbled and needs to be corrected during negotiations.

The Netherlands BIT requires just compensation, which represents the "genuine value" of the investment. Interest is to be paid at a normal commercial rate. Compensation

shall be paid and made transferable without undue delay in the currency of the investor or any freely convertible currency accepted by the investor. Thus, all of the requirements of the prompt, adequate and effective standard are present.

F. Currency Transfers

Article 5 gurantees that payments related to an investment may be transferred in a freely convertible currency without undue restriction or delay. This provision fails to specify the exchange rate.

G. Investor-to-State Disputes

The Netherlands investor-to-state disputes provision applies to disputes concerning an investment. If such a dispute is not settled within three months, the investor may submit it to ICSID arbitration, provided that both Lithuania and the Netherlands are parties to the ICSID Convention. If they are not, then the investor may invoke arbitration before the ICSID Additional Facility or under the UNCITRAL Rules.

The Netherlands BIT contains an express consent to arbitration under the investor-to-state disputes provision, a consent that is often implied in other BITs. It contains a clause on company nationality under article 25(2)(b) of the ICSID Convention, discussed in Part One, and standard language stating that any award shall be final and binding.

It also contains language stating that the award shall be enforced in accordance with domestic law. This seems to require enforcement only if there is domestic law making the award enforceable. A stronger provision from the investor's perspective would state that each party shall provide for the enforcement of the award in its territory.

H. Preservation of Rights

Article 3(5) of the Netherlands BIT provides that more favorable treatment under domestic law or international legal obligations shall prevail.

I. Application to Existing Investment

Under article 10, the Netherlands BIT applies to investments made after December 29, 1990. Investments made before that date are covered if subsequently reregistered.

J. Other Provisions

1. Consultations

The Netherlands BIT provides, at article 11, that either party may propose consultations concerning the interpretation or application of the treaty and that the other party shall afford sympathetic consideration to such a request. Because of a typographical error, the word "consideration" was omitted and should be inserted during negotiations.

2. Amendments

Article 12 provides that the BIT may be amended by written consent. The amendment shall become effective when the parties have notified each other that constitutional requirements have been complied with.

XI. TUNISIA

A. Definition of Investor

The definition of investor under article I(2)-(4) is a standard one. It uses place of incorporation to ascribe nationality to companies, although the wording is not symmetrical with respect to the two parties. Note also that the proposed treaty refers to Indonesia rather than Lithuania.

B. Definition of Territory

The definition of territory at article I(6) applies only to Tunisia. It explicitly mentions the continental shelf, which some treaties do not. It also includes the "adjacent seas" over which Tunisia has sovereignty, sovereight rights or other rights in accordance with international law," which makes this one of the broadest of all territorial definitions. Again, the treaty refers to Indonesia rather than Lithuania.

C. MFN and National Treatment

The Tunisia BIT has no provisions guaranteeing MFN or national treatment to investment or investors.

D. Absolute Standards

Article II of the Tunisia BIT guarantees to investment fair and equitable treatment and "adequate" protection and security. The use of the term "adequate" rather than "full" or "most constant" seems to weaken the clause somewhat.

E. Expropriation

Under article V of the Tunisia BIT, expropriation must be for a public purpose related to the internal needs of the state and must be accompanied by full, prompt and effective compensation. Full compensation shall amount to the "effective value" of the investment prior to the moment in which the decision to expropriate is announced or made public. As in the case of the Morocco BIT, the use of a date prior to public announcement of the expropriation seems implicitly to acknowledge that compensation shall be based on market value. Compensation is to be paid without delay and be effectively realizable and freely transferable. All elements of the prompt, adequate and effective standard thus are at least implicitly present.

The Tunisia BIT provides for judicial review of the expropriation and amount of payment. It also has the provision requiring compensation for the expropriation of foreign owned shares of a local company previously discussed in connection with the Italy BIT.

F. Currency Transfers

The Tunisia BIT currency transfers provision, at article VI, is weak from an investor's perspective. The obligation to grant transfers without unreasonable delay is "within the scope of [the host state's] laws and regulations." That is, the transfers article is subject to local law. In addition, the transfers article applies only to certain listed transfers, not to all payments related to an investment. Transfers are to be made only after the investor has complied with all tax obligations.

Unless otherwise agreed by the investor and the host state, transfers shall be in the original currency or any other freely convertible currency at the prevailing exchange rate on the transfer date in accordance with exchange regulations.

G. Investor-to-State Disputes

The investor-to-state disputes provision in the Tunisia BIT, like that in the Korea BIT, applies to "any dispute." Again, as with the Korea BIT, the provision authorizes only ICSID arbitration or conciliation and thus the scope of the disputes provision is limited by the ICSID Convention. In the event of a disagreement over whether to use arbitration or conciliation, the investor shall decide.

The provision specifies that, if the disputes has not been resolved amicably within six months, the investor may consent to arbitration or conciliation. Thereafter, either party may institute proceedings provided that the investor has not submitted the dispute either to previously-agreed procedures or to the courts of the host state. This condition mirrors language contained in the U.S. BITs.

H. Preservation of Rights

The Tunisia BIT provides that more favorable treatment under "any other Agreement" shall prevail. The reference to other agreements probably refers to other treaties, but it could also refer to agreements between the investor and the host state. This should be clarified.

I. Application to Existing Investment

Under article III, the Tunisia BIT applies to existing investment established in accordance with the host state's laws. Note that the treaty refers to Indonesian law rather than Lithuanian law.

XII. TURKEY

A. Definition of Investor

The definition of investor, at article 1(1), is not unusual. Companies must be constituted under the laws of a party and have their headquarters in the territory of that party, which means the definition is more restrictive than in many treaties. The nationality of individuals is based on each state's own law, as in virtually all BITs.

B. Definition of Territory

The Turkey BIT definition of territory, at article 1(4), is confusing. It refers to

maritime areas and the continental shelf "delimited by mutual agreement between the parties concerned . . ." It is unclear who the "parties concerned" are. Because Lithuania and Turkey share no common borders, there is no reason for them to agree on the delimitation of any maritime areas. It also suggests that, if for any reason, the "parties concerned" have not mutually agreed on a boundary, then the definition cannot be applied. This definition should be clarified or replaced by another one.

C. MFN and National Treatment

Article II(2) guarantees MFN and national treatmen to investment.

Under article II(4), there is an exception for treatment under customs unions, regional economic organizations or similar international agreements. A second exception exists under that article for agreements relating wholly or mainly to taxation. Lithuania may wish to add an exception for domestic laws relating to taxation.

D. Absolute Standards

The Turkey BIT has no provisions of the type discussed under this heading in Part One.

E. Expropriation

Expropriation under article III must be for a public purpose, nondiscriminatory, accompanied by prompt, adequate and effective compensation, and in accordance with due process and the general principles of treatment under article II. The reference to article II appears to require, in substance, MFN and national treatment.

F. Currency Transfers

Article IV requires the parties to permit in good faith all transfers related to an investment to be made freely and without unreasonable delay in the convertible currency in which it was made or in any convertible currency at the rate of exchange on the date of transfer, unless otherwise agreed by the investor and the host state.

G. Investor-to-State Disputes

The Turkey BIT investor-to-state disputes provision applies to disputes in

connection with investment. If the disputes is not settled by good faith negotiations within six months, the investor may select (1) arbitration before ICSID, if Lithuania and Turkey are both parties to the ICSID Convention; (2) ad hoc arbitration under the UNCITRAL rules, if Lithuania and Turkey are both members of the United Nations, an unusual and seemingly unnecessary condition; or (3) arbitration before the Court of Arbitration of the International Chamber of Commerce in Paris.

The Turkey BIT imposes a condition on the investor's right to arbitration that seems to say that arbitration is not available if the investor submitted the dispute to local courts and the suit was decided within one year. The language, however, is badly garbled and should be clarified.

The Turkey BIT also has standard provisions to the effect that the award shall be final and binding and that the host state will execute the award according to its laws. From the investor's perspective, this is less than desirable because it suggests that the obligation to enforce is subject to local law.

Note that the Turkey BIT provision is set forth at article VII, paragraphs 1, 2 and 4. Paragraph 3 seems to have been mistakenly omitted.

H. Preservation of Rights

Article VI of the Turkey BIT provides that more favorable treatment guaranteed to investment or associated activities under domestic laws, international legal obligations, and obligations assumed by either party shall prevail. The term "associated activities" is not defined.

I. Application to Existing Investment

The Turkey BIT applies to existing investment.

J. Other Provisions

1. Entry and Sojourn

The Turkey BIT provides, at article II(3), that investors of one party shall be permitted to enter and remain in the territory of the other party for the purpose of

establishing and operating investments to which they or their employer have committed a substantial amount of capital. This right, however, is subject to each party's employment and immigration laws. The provision is modelled very closely after a standard provision in the U.S. BITs.

2. Employment

Under article II(3), companies incorporated under host state laws and that are considered investment shall be permitted to engage managerial and technical personnel of their choice, regardless of nationality. This right, however, is subject to each party's laws concerning the entry, sojourn and employment of aliens. This provision is patterned after a standard provision in the U.S. BITs.

3. Amendment

Article IX(3) provides that the Turkey BIT may be amended by written agreement. The amendment shall enter into force when the parties have notified each other that all internal requirements have been completed.

XIII. VIETNAM

A. Definition of Investor

Article 1(1)(c) provides that natural persons are investors of a party if they are citizens under its law or permanently reside in its territory. The use of permanent residence as a basis for treaty protection is unusual, but there is precedent for it in Lithuania's treaty with the United Kingdom. It does not appear in any other Lithuanian treaty. The nationality of companies is based on the place of incorporation.

B. Definition of Territory

The definition of territory in article 1(1)(d) of the Vietnam BIT applies only to Vietnam and thus a definition for Lithuania must be added.

The definition for Vietnam is interesting in two respects. First, it does not appear to include any maritime area beyond the territorial sea, which is limited by international law to twelve miles. Thus, investments in the EEZ would not be covered. Second, it includes the airspace above Vietnam. It is unclear what kind of investment would be located in the airspace.

C. MFN and National Treatment

Article 3(1) guarantees MFN treatment for investment.

Under article 4, the MFN obligation does not require extension of treatment afforded by virtue of a customs union, free trade area, common external tariff area, monetary union, similar international agreement, or other forms of regional cooperation.

The MFN obligation also does not apply to an international agreement or arrangement relating wholly or mainly to taxation or domestic legislation relating wholly or mainly to taxation.

D. Absolute Standards

The Vietnam BIT guarantees investment fair and equitable treatment in two different places, article 2(2) and article 3(1). There does not appear to be anything added by the second reference. Article 2(2) also guarantees full protection and security to investment.

E. Expropriation

Under article 5, expropriation must be for a public purpose, in accordance with due process, nondiscriminatory, and accompanied by prompt, adequate and effective compensation. In further elaboration of the requirements of prompt, adequate and effective compensation, the Vietnam BIT specifies that compensation shall represent the market value of the investment immediately before the expropriation became public knowledge and shall be freely transerable in a freely usable currency. The term "freely usable currency" is defined in article 1(1)(e).

There is also a requirement of interest, although from an investor's perspective the language could be improved. Specifically, the Vietnam BIT states that any unreasonable delay in payment shall carry an appropriate interest at a commercially reasonable rate as agreed upon by the parties or at such rate as prescribed by law. Obviously, the possibility may arise that the parties will not be able to agree on an interest rate. That means the rate is that prescribed by law. This assumes that local law will prescribe an interest rate. If not, then there may be no basis to derive the interest rate.

F. Currency Transfers

The Vietnam BIT currency transfers provision, at article 6, is weak from an

investor's perspective because its guarantee that transfers shall be made in any freely usable currency without unreasonable delay is made subject to the host state's laws, regulations and administrative practices. In addition, it applies only to certain listed transfers, not all transfers related to an investment. The exchange rate is that prevailing at the time of remittance. Article 1(1)(e) defines freely usable currency.

The Vietnam BIT explicitly provides that investors shall receive MFN treatment with respect to the listed transfers. Even without this provision, the Vietnam BIT's general MFN provision may well have provided this protection.

G. Investor-to-State Disputes Provision

The Vietnam investor-to-state disputes provision, at article 7, applies to disputes involving an obligation by the host state to an investor regarding an investment or an alleged breach of any right conferred or created by the BIT with respect to investment. If the dispute is not resolved by negotiations within six months, the investor and the host state may refer it to conciliation or arbitration under the UNCITRAL conciliation or arbitration rules.

The Vietnam BIT is unique among Lithuania's concluded or proposed agreements in that it makes no provision for ICSID arbitration. It is also unusual in providing that both the investor and the host state shall submit the dispute to arbitration or conciliation and makes no provision for what is to be done if they cannot agree on which form of dispute settlement to use. Presumably, the host state could insist upon nonbinding conciliation without violating the BIT. Yet, this would prevent the investor from obtaining binding arbitration since the BIT does not appear to authorize either form of dispute settlement without the further agreement of both parties. From the investor's perspective, this is a very weak disputes provision.

In the copy of the Vietname BIT used for this analysis, article 7(2)(a) was not legible, but it appears to address the manner in which a conciliation commission is to be formed in the event that the parties choose conciliation. In the event that the parties choose arbitration, the tribunal is to be formed in the usual way. Arbitration is to be in accordance with the provisions of the BIT, the relevant domestic laws of the host state, and generally recognized principles of international law. As previously discussed, this is an undesirable choice of law clause from the investor's perspective because it leaves unclear which law will govern if international and national law conflict.

H. Preservation of Rights

The proposed Vietnam BIT has no provision relating to other laws or agreements that provide more favorable treatment to investment than the BIT.

I. Application to Existing Investment

Under article 10, the Vietnam BIT applies to investments made after January 1, 1988, in accordance with the host state's laws.

J. Other Provisions

In the copy of the Vietnam BIT used for this analysis, the definition of investments was partially illegible and thus could not be reviewed.