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Prepared by David Stanfield
for Terra Institute

# STUDY OF THE ROMANIAN LAND MARKET

[Note: This is a draft report prepared under a contract between Terra Institute and the World Bank to help identify the constraints to the development of a land market in the rural areas in Romania. The report provides an analysis and summary of existing laws, policies, institutional and administrative arrangements relevant to the land market. The report is the sole responsibility of the author, and does not represent the views of World Bank Officials nor of any part of the Romanian Government.

A second report, a Policy Note, included herein as Annex 6 was prepared from an earlier version of this report, as a discussion document to assist subsequent World Bank teams which might go to Romania in exploring the policy implications of this study with the Romanian government. Again, this Policy Note represents only the views of the author and not those of the World Bank nor of the Romanian Government.]

TABLE OF CONTENTS

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## 1. BACKGROUND AND OBJECTIVES OF THE PAPER

Romania has a population of 23.3 million, occupying a total land area of 238,000 $km^2$, with 150,000 $km^2$ of agricultural land. Since 1989, the government and civil society have been dramatically re-arranging the ways that people manage this land resource and the constructions permanently attached to it (immovable property under the Civil Code). They have been shifting from a centralized command economy based on large, state owned enterprises, to highly decentralized, often fragmented, privately owned properties and enterprises, in a legal and institutional framework which defines or should define a market oriented economy.

In Romania's market oriented economy based on the private ownership of land and other immovable property, markets in such properties will provide the main signals for decision making concerning the investments people make in them and the uses to which they are put. By the term "market" in this context we mean transactions which transfer ownership or use of immovable properties, such as through sales, renting, leasing, and gifts as well as through promises to transfer ownership such as mortgages.

Such transactions have been very rare during the past 40 years, but though still relatively infrequent are becoming more frequent. The number of transactions which may eventually develop can be estimated by comparing Romania with countries such as the Netherlands, which has 6 million registered land parcels, and an average of 3 million transactions yearly. In other countries the percentage of annual transactions are less, depending in part on the degree of urbanization, varying from 10%-30% per year.

It is hard to say what the final count of privately managed immovable properties which can be marketed will be, once the privatization phase in Romania stabilizes. There may be 25-30 million agricultural parcels, 8-9 million dwelling units, and 1 million business properties. Using a moderate estimate of 15% annual transactions leads to the estimate of 5-6 million exchanges of ownership or use, or mortgages each year. Each transaction represents exchanges of capital and usually implies subsequent changes in investments and control over capital flows in the country. Immovable property markets are or will be of crucial importance to the economy and to the political future of the country.

There are at least two problems inherent in relying on markets in immovable properties to guide economic decisions:

> (1) there is a tendency for privileged segments of the population to acquire properties and for those without capital or who in some other ways are excluded from market transactions, being unable to acquire and hold immovable properties, thereby leading to polarization and serious social problems; and
>
> (2) the drive to maximize individual profit as the driving force of market oriented economies can lead to short term use strategies which degrade the natural resources base and preclude their availability for future generations.

The purpose of this paper is to suggest options which the Romanians might consider to "tap the rolling wheel" of their immovable property market reforms in order to maximize the advantages of their market oriented economy while dealing with its inherent problems. Underlying these suggestions are three

objectives:

--improve the dynamism of immovable property markets so as to encourage the ownership of land and other immovable properties by those who will make the most productive use of them;

--insure the access of all social strata of the country to these markets, and avoid the polarization of ownership which can prove debilitating;

--assure that land, water and air are available for future generations, by guiding the operation of property markets to protect these resources and by defining the environmental responsibilities of private and public immovable property ownership.

This paper focuses principally on agricultural land markets. The specific goal of the paper is to identify the constraints to the development of a land market in the rural areas in Romania. Broader land market issues pertaining to immovable property markets also have to be dealt with, however, since people move themselves and their capital from one segment of immovable property markets to another, and they make or refrain from making investments in one segment or another depending on conditions in various segments. In this context, the paper analyzes and provides a summary of some of the existing laws, policies, institutional and administrative arrangements relevant to the land (immovable property) markets.

## 2. IMMOVABLE PROPERTY MARKET SEGMENTS

Immovable property markets operate on different rules in different market segments. In Romania there are five main immovable property market segments and at least 14 sub-segments in a legal sense, since each has a distinct set of market rules usually formally expressed in law or regulations which govern transfers of ownership or of use:

(1) agricultural land, in turn divided into:

-- privately owned mountain farm land much of which has remained privately owned during the period of collectivization (1 million farms, 1.8 million hectares, divided into as many as 3-4 million parcels);

--ex-cooperative lands now privatized through Law 18 (5 million farms, 23 million parcels, 8 million hectares), some of which cannot be sold for 10 years and another portion subject to the pre-emptive right of the proposed Agrncy for Rural Development and Planning (ARDP);

--former state farm land now managed by commercial enterprises (800 enterprises, 1.9 million hectares), with as yet undefined rights to sell land; and

--communal grazing lands (2.1 million hectares) under concessions to farmers by local government agencies.

(2) residential properties, divided into:

-- properties which have effectively been privately owned throughout the collectivization period;

-- properties which were state owned but have become privately owned due to the privatization done through Law 18;

-- dwelling units in state constructed buildings, which people have purchased from the state since 1989;

-- privatized dwelling units in nationalized buildings which may be subject to restitution to previous owners.

(3) Commercial and industrial properties

The transformation of these properties has resulted in three main sub-segments:

--publicly owned but privately leased under some concession agreement;

--business sites in state built buildings, privatized since 1989;

--privatized business sites in nationalized buildings, subject to restitution claims.

(4) Publicly owned land or at least not privately owned land in and around settlement areas which has not been developed, or which has been reserved in the past for parks, for protected areas due to their environmental fragility (along river banks, on steep slopes), rights of way for roads, irrigation works, lakes, rivers and streams, or for their unique cultural values (monuments, archeological sites). Some of these lands have been given or may be transferred into temporary use or concession by private interests.

(5) Publicly owned buildings (office buildings occupied by governmental agencies, or by private businesses, hospitals, schools, etc.)

--state constructed with no restitution claims;

-- or nationalized and possibly subject to restitution.

There are certainly more than these 14 immovable property market legal segments, since market participation rules are still evolving. For example, the rules the agricultural associations may establish requirements for the land transactions of their members, and the condominium associations may define procedures for the member owners of apartments to sell or rent their properties.

Also immovable property markets are influenced by location factors, so that yet other segments will emerge as geographic factors impose different dynamism for transactions and different values on land and buildings in different regions of the country.

Creating, encouraging and coordinating these various segments of immovable property markets is an important although admittedly complex task. The success of national and regional economic development policies rely on responsive property markets.

Problem: The creation of a coherent set of land market institutions requires careful coordination of laws, governmental policies and investment of resources. The development of a legal framework for these different immovable property market segments of necessity has been more responsive to immediate crises than to a carefully crafted legislative program, thereby producing a certain degree of implementation inefficiency and legal confusion. Different donors in support of the transition may suggest different approaches, institutional arrangements and legal concepts often incompatible with existing ones. Different Ministries embark on programs which affect immovable property markets and which may not be compatible with initiatives with other Ministries, or may duplicate those initiatives leading to a sub-optimal use of resources.

Potential Solution: To complete the creation of coherent immovable property markets, Romania might consider what has been done in Albania, namely the creation of a Immovable Property Market Coordinative Working Group with representatives of the Ministries and Agencies most directly responsible for privatization programs' implementation and the administration of laws which impact on immovable property markets.

The primary task of this Working Group would be the drafting of an Action Plan for the Institutionalization of Immovable Property Markets, whose objectives would be defined according to the Romanian priorities. The Action Plan would outline the steps to be taken over a 4-5 year period to achieve those objectives, as well as a transition Action Plan Coordination Unit to implement the plan, channeling all resources provided for the establishment of immovable property market institutions toward the achievement of those objectives.

Some of the issues which could be addressed in the Action Plan under the coordination of the Working Group, include the preparation of coherent legislation, the development of procedures for clarifying and validating the private and public ownership rights to immovable properties which result from the privatization programs, and the identification of specific public policies which can (1) improve the dynamism of immovable property markets, (2) assure widespread access to these markets, and (3) guide these markets so that the country's natural resource base is improved.

A more detailed discussion of these issues is presented in Section 9 of this paper (Elements of an Immovable Property Market Development Strategy).

## 3. THE AGENCY FOR RURAL DEVELOPMENT AND PLANNING

The responsibilities of the Agency for Rural Development and Planning (ARDP) are outlined in Law 18/1991, and are further defined in a special draft law (See Annex No. 1 for additional information about the ARDP, summarized from the Introduction to the November, 1993 draft of the law and from a 3.11.94 report by the Commission for Agriculture, Forestry, Food Industry and Related Services of the Chamber of Deputies).

The new ARDP is to be a public institution, under the Government, not under a specific Ministry. The President of the Administrative Council of the ARDP has the rank of Minister. The ARDP has its own independent budget, with income from revenues of selling, renting, or leasing of land or from concessions, as well as from direct state subsidies, loans, and interest payments.

The ARDP has the following functions:

--set-up economically-sized farms for leasing, renting, concession or sale to interested farmers;

--encourage the re-settlement of farmers from densely populated areas of the country to areas with labor shortages;

--support private investors interested in farms and agricultural companies;

--supply technical assistance to farmers for land improvement;

--facilitate supply of materials needed for improvement of degraded land;

--facilitate contracts between farmers and domestic or foreign companies for materials necessary

for creating or improvement of existing farms.

--facilitate credit flows by providing collateral to investors interested in purchasing farms through the ARDP;

--grant long term credit to private investors wishing to purchase farms through the ARDP;

--provide funding for farmers' retirement;

--administer extravilian land which remains as state owned or which the state acquires under Law 18/1991 or as the result of mortgage foreclosures or penal sanctions;

--owns the state owned registered capital of commercial companies created under Laws 15 and 31 of 1990 [Note: this is an important new provision, authorizing the ARDP to represent the state in the management of the assets of these commercial companies. It should be ascertained whether the ARDP also assumes the debts of these companies];

The ARDP will have various sources of land it will rent, lease or sell to farmers:

(1) It will have the pre-emptive right to acquire the privatized extravilian agricultural land (land outside of the settlement boundaries which was used for agriculture by the ex-cooperatives and which has been allocated under Law 18 to private ownership). This pre-emptive right is to be exercised when the owners of this land wish to sell or are forced to sell, but no higher priority buyer agrees to buy. The higher priority potential buyers are co-owners, neighboring owners, and holders of leases to the land being sold;

(2) It assumes the control of land which came under the provisions of Law 18 for allocation to private persons but remain unallocated.

(3) The ARDP may also acquire land in the instances when persons who have obtained ownership rights to land but fail to fulfill the requirements of Articles 18, 20, 39, or 47 of Law 18 (See Annex No. 1 for summaries of these Articles).

(4) The ARDP can purchase land without exercising the pre-emptive right.

(5) Farmers who retire can transfer their lands to the ARDP (they then receive a retirement bonus of 10% of the value of the land, and then the total value of the properties so transferred through installments).

The financing of the ARDP is to come through the establishment of a special fund administered by the ARDP, under the control of the Parliament.

The pre-emptive power of the ARDP to acquire land when owners wish to sell reduces the number of potential buyers to co-owners, "neighbor owners" and people holding a lease to the land to be sold. This limitation can act to keep the price of agricultural land close to its capacity to produce economic profit rather than its speculative value. This result would be desirable if it is social policy to keep land in the hands of people who are farmers or neighbors of farmers, and not people who have other professions but who are willing buy land at prices higher than the value of what it can produce.

However, the limitation on the number of buyers can produce other consequences, including the difficulty of the selling owners to achieve an acceptable price for their land, and a reluctance on the part of lending agencies to accept agricultural land as collateral, since they cannot rely on there being a large number of

people who are interested in acquiring the property. This latter problem could be reduced if the ARDP could be relied upon by lending agencies to buy foreclosed mortgages.

The draft law's introduction of leaseholders as holders of pre-emptive rights to purchase the land they lease follows the requirements of Law 16/1994. The probable effects of this provision will be discussed in the section of the report dealing with agricultural land leasing.

The owners wishing to sell agricultural will notify the ARDP of that wish, including in that notification the following information:

-- the seller's full name and residential address;
-- a copy of the titlu de proprietate, or the ownership certificate accompanied by an official statement of actually getting the possession of the land;
-- the area of the parcel to be sold and the category of use;
-- the names and residential addresses of the parcel's co-owners, neighboring owners and any leaseholders;
-- the asking price and purchase conditions desired by the selling owner;
-- any mortgage, servitude, court ordered restrictions on dealing or other pending interest in the land;
-- whether the land was purchased through the ARDP.
-- a certificate from the local court that the land is not involved in any litigation.

The Agency then notifies all co-owners, neighboring owners and leaseholders of the offer to sell. If none of these people respond to the sale offer within 30 days of being notified by the ARDP, the Agency then has power to acquire the land at the price and under the conditions specified by the owner.

If at this point in the process the Agency does not inform the seller of its intention to purchase the land within 30 week days, or if the ARDP so informs the seller but does not pay within 30 week days of the date when the ARDP and the owner reach an agreement for the sale, the pre-emptive right of the ARDP is annulled, and the seller is free to sell to anyone, but only at the price and under the conditions specified in the original offer of sale. The sale price accepted by the ARDP cannot be less than the value of the land as established by existing "normative acts".

No alienation of the assets of commercial companies owned by the ARDP is allowed except that allowed by Law 85/1992, and except for the restitution of land owned by these companies.

Notaries who are involved in any sale have the obligation to verify that these legally defined procedures are followed before they finalize any sale contract.

An important feature of the draft law is the requirement that the seller set the price of the land and the conditions for its sale. These two parts of any sale in market economies are usually the result of negotiations between the seller and potential buyers, although the seller will usually have an idea of the value of the land from consultations with people familiar with recent sales of similar land in the area. Such consultations are of very limited use under present conditions in Romania where land markets are only beginning to function and then mostly in urban areas.

If the seller sets a very high price in the opinion of neighbors or leaseholders, then the ARDP will be obliged to pay that price or ignore the offer, thereby letting the seller try to sell the land on the open market. If the seller finds no buyer, and then decides to reduce the asking price, the process of notification starts all over again. Eventually either one of the neighbors or leaseholders will find the offer attractive, or the ARDP will make the same decision.

If the ARDP decides to buy the land and actually completes the purchase, it must sell it within a maximum period of 3 years from its acquisition, or if the ARDP decides to make some improvements to the property, within a maximum of 5 years from the date the land has been acquired. In the meantime it can rent or lease the land.

The exercise of the right to purchase land will make some heavy demands on the ARDP:

--It must find the money to pay for it on short notice, meaning that it must have the funds on hand for rapid engagements in such transactions.

--It must have a budget sufficient for having a staff adequate for appraising the value of the land offered for sale.

--Its staff must be adequate for receiving the notification of the seller's desire to sell and for preparing and sending out the notifications to the co-owners, neighboring owners, and any leaseholders.

--The ARDP or the notaries, and probably both, will have to have the staff necessary to verify the accuracy of the lists of co-owners, neighbors and leaseholders which the sellers present, in order to assure that the sellers are complying with the requirements of the law.

In addition to these costs for its land market operations, the ARDP must have the staff and financial resources for providing:

-- financial assistance to young farmers,

-- retirement bonuses and life annuities to retired farmers,

-- assistance to persons and groups in setting up and modernizing farms, legal, technical, economic and management assistance to farmers,

-- support of productive and service activities in rural areas,

-- resources for the improvement of the productivity of lands of low productivity.

These budgetary requirements can be partially met eventually from the revenues of the ARDP from the renting, leasing and sale of land it administers. The selling price cannot be less than the purchase price, plus the value of any improvements which the ARDP makes, adjusted for inflation.

However, revenues from sales may be limited, at least in the initial years. First, it is not clear that there will be a significant number of agricultural land sales for at least two reasons:

(1) under conditions of limited profitability of agriculture, investors with capital may not be interested in buying agricultural land from the ARDP, although under the present conditions of few alternative opportunities for investment of capital, land can represent an attractive asset, and;

(2) sales which may be arranged will not necessarily generate much revenue. It seems likely that the ARDP will sell through installment payments by the buyers, over a period of up to 30 years, with an advance payment of 15%. Moreover, the interest rate charged for such financing cannot higher than the legal rate, and it will probably be lower than the bank or legal rate as a form of assistance to beginning farmers.

Financial support for the ARDP also will come from the stamp duties (transaction tax) collected on the sales of arable land between private parties (sales involving the ARDP are exempted from such stamp duties), as well as from loans and grants to the ARDP, as well as state budget allocations.

It is likely that this last revenue source will be the main one for the ARDP at least during the first few years of its functioning.

In the absence of this ARDP, units of local government are acting as the representatives of the State in the leasing and selling of public lands as well as in the allocation of unallocated lands under Law 18. However, these units are not mandated to exercise the pre-emptive rights or the rights of property purchase envisioned for the ARDP.

The problems identified as justifying the creation of the ARDP are certainly constraints on Romania's economic wellbeing, and the objectives of the ARDP to find solutions to these problems are certainly desirable. The draft legislation has been carefully prepared. There may be practical problems, however, which could complicate matters.

Problem: To achieve its objectives, the ARDP will need substantial support from the state budget for the first few years at least, and a strong initial effort at staff recruitment and training.

A similar institution in France (the SAFER's or Sociétés d'aménagement foncier et d'etablissement rural) operates in 29 Regions with a staff of approximately 800, requiring an annual state budget support of US$11 million (see Annex No. 2 for a description of the SAFER). Moreover, the decline in the demand for agricultural land in France during recent years has led to a declining trend in price, which makes it financially difficult for the SAFER's to buy land and then re-sell it at a sufficiently high differential to be able to finance its operations. Although land prices in Romania appear to be rising faster than inflation in recent years, a stagnant period of agricultural land prices may occur, until or if agricultural becomes sufficiently profitable to attract investment capital. Such a situation would add to the financial problems of the ARDP.

Potential Solution: Careful consideration is worth giving to the gradual launching of the ARDP so as to minimize this potentially large demand on the budget and to permit the build up of the number and technical training of staff.
Alternatives for the Implementation of the ARDP should be explored, including the following:

1) Delay the implementation of the pre-emptive right for land purchasing for a few years, allowing people to get more experience with the market values of land of different sorts and in different places. During this initial stage the ARDP could focus on building a system for gathering information about the market values of immovable properties through agreements with local notaries. This information could be offered to interested people and agencies (see Annex 2 for a description of the information functions of the SAFER in France.) It may turn out that the pre-emptive right of land acquisition may be rarely exercised, as in France, with the ARDP acquiring land through the direct negotiation with potential sellers.

Once the financial and staffing status of the ARDP is on firm footing, and it is able to meet the requirements of the law for purchasing land, it could make offers to buy which could only be superseded by an offer from a higher priority potential buyer. It may turn out that the pre-emptive right of land acquisition may be rarely exercised, as in France, with the ARDP focussing on its many other responsibilities, and only acquiring land through the direct negotiation with potential sellers when there is a clear need and an objectively attractive price.

2) For encouraging the sale of land to neighbors, co-owners and leaseholders, a temporary

Government decision could be issued requiring people desirous of selling arable land to post the availability of the land for purchase in a prominent place in their localities for a period of 15 days (or some other period), with such posting validated by the mayor of the locality.

Once a sale has been agreed upon, the notary involved could require that the seller provide a notarized statement that the seller's selection of the buyer followed the priority of co-owner, neighboring owner, and leaseholder, and that none of the people at a higher priority level agreed to buy at the price and under the conditions agreed upon with the potential buyer. The penalty for the seller making a false declaration could be the threat of annulment of the transaction within a prudent period of time following the sale. This threat would give an incentive to the buyer to encourage the seller to follow the provisions of the law and not collude in making of false declarations.

Such procedures would provide at least some assurance that the objectives of the draft law were being achieved without having to hire a large staff and without having the ARDP intervene in the land markets. The costs for the Notary for assuring the compliance of the seller with the law could be built into the fee the notary charges for drawing up the sale contract.

(3) One of the main problems of agriculture in Romania is the holding of land by people who are unable to farm it effectively (with a large proportion of owners being distant urban residents, of advanced age, or holders of full time wage jobs). While this is one of the problems due to be corrected by the proposed ARDP, should the present debate over that ARDP limit its functions to the management of state owned land (in the private domain), this problem would in large part remain.

If in fact this pattern of landholding creates difficulties for the holders, it should result in a desire on the part of such holders of the land either to rent it to someone who could use it more productively, or to sell it, i.e., some land market transaction. Market transactions can occur when the owners want to rent out or sell, and when some other persons want to rent in or buy. Transaction are encouraged by policies:

-- which facilitate the confidence of the parties in the transactions, and

--which affect the motivations of the parties to engage in transactions.

Concerning the question of confidence, a functioning and well viewed registration system is very useful, since that system will provide legal evidence as to the ownership of immovable properties.

A second type of policy is the effort to remove lingering doubts about who owns the land and thereby the right to rent out or sell. The first registration of ownership employed to create the new registration system could be helpful in this regard by:

--making the correction of privatization "errors" (such as the granting of ownership rights to a property by one privatization program to one person, and by another program to another person, or the omission of boundary descriptions in the privatization documents) an integral part of the work of the registration field teams;

--securing local community validation of the first registration results through their public display and correction;

--issuance of new certificates of ownership once local community member were in

agreement about who own what properties.

Such functions of the Cadastre and Registration program should be explicitly considered and programmed into the field work required for creating the new system.

A second policy option could be the creation of a special administrative Land Tribunal to resolve disputes over ownership or boundaries which linger after the initial privatization programs are more or less completed and which clog local courts. Such a tribunal would not be part of standard court structure in the sense that the judges would be respected local people with knowledge about land matters as well as the law and not necessarily lawyers, and the tribunal procedures used would stress mediation rather than deducing which claimant is right and which is wrong.

Concerning the question of motivating participants in land market transactions, policy options for motivating the buyers (in addition to general economic policies) would include the reduction of transaction costs which the buyer pays as well as access to capital needed for the transaction. The transaction cost question needs some further monitoring (particularly the real value of transfer taxes--relatively low at present, and the fees of notaries which may be significant, and who pays). Access to capital depends on bank lending policies as well as foreign exchange transfer policies which affect the flow of family remissions of capital.

Policy options for motivating the sellers also include the reduction of transaction costs which the sellers pay as well as possibly the increase of some of the constant costs they incur from holding onto a property which is not producing much income. A frequently used modification in constant costs would be the real increase in property taxes (apparently very low or non-existent at present). Whether such taxes should be imposed mostly on the land or mostly on the improvements on the land should be explored.

If these land market "influencing" policy options are not deemed sufficient to get the land into the hands of those who will make it productive and not held by people primarily for speculative purposes, another alternative could be some version of the Austrian approach (See Annex 3 of "Study..." for a description of the Austrian approach to rural land markets). The Austrians use local land commissions, which review proposed sales and decide whether to approve the transactions. Information is gathered from the proposed buyer and from the seller to enable the commission to make a decision. The proposed transactions are not approved if:

- the buyer is not a farmer
- the interest in dividing the land to promote and/or create agricultural or forestry enterprises prevails over the use under the terms of the contract
- there are reasons to assume that the land is purchased only for profitably reselling it (divided or undivided)
- concluded from the acquirer's profession and domicile there are reasons to assume speculation by investment in urban land
- the proposed payment substantially exceeds the usual market price without sufficient reason
- the reminder of the land owned by the seller after the transaction does not suffice for an efficient enterprise.
- the transaction obviously serves to exploit forest land.

Compared to the ARDP idea, this approach has several positive aspects: (1) the commission's task compared to that of the ARDP is relatively simple, based on objective criteria as to who is a farmer, or could be a good farmer; (2) the number of bidders is large, excluding only those who are not farmers or who are obviously intent on speculating with the land, thereby minimizing the

risks of collusion among the potential buyers to defraud the seller, and making lending agencies less concerned about their abilities to dispose of any land acquired through mortgage foreclosures; and (3) there is no drain on the public treasury for the purchase of land.

## 4. AGRICULTURAL LAND LEASING

Encouraging the leasing of land to help assure that the land is in the hands of those who can make it most productive is an important policy objective. Law 16/1994 regulates the leasing of agricultural land. The general policy objective is to minimize constraints on the leasing process, letting the lease agreements define the desires of the parties to the lease.

The law, however presently establishes certain limitations on such lease contracts, some of which seem problematic. See Annex 4 for a discussion of the articles of the law which seem most problematic.

## 5. TAXES, FEES, DUTIES AND OTHER CHARGES ON IMMOVABLE PROPERTY TRANSACTIONS (drawn from Munro-Faure, 1994, Section 2.7, and Leatherdale, 1993, Section 5.18)

The existing property tax rates were established in the 1980's without adjustment for inflation, which means that the collection of such taxes very probably costs more than the funds raised. Inflation was 165% in 1991, 210% in 1992 and 300% in 1993. The exchange rate for the lei rose from approximately 700 lei per dollar in 1993 to approximately 2,500 lei per dollar in October, 1995, an increase of 257%, although the present rate at th exchange houses is closer to 3,100 to the dollar. The existing tax on land is 0.51 lei per square meter of the property's area in metropolitan towns, and 0.41 lei per square meter of land in other towns. The owner of a house lot of 300 $m^2$ in a city would only 153 lei, or about US$0.06. The tax on buildings is based on the insurance value of the building, and is likewise very low in real terms.

Taxes on extravilian land and buildings are restricted to private farmer in mountain areas, and are based on tables of land use and soil fertility. The rates range between 35 and 400 lei (US$ 0.16) per hectare per year. This compares with a typical rate of US$28 per hectare in the midwestern U.S. The total Romania collected from this tax was 160 million lei collected from 1 million private farmers in 1992, very little revenue in real terms, averaging only 160 lei per farmer (about US $0.50).

Property taxation on the new owners of agricultural land has been postponed until 1996.

Inheritance taxes are regulated presently by Cabinet Order No. 37 of 25 August, 1995 and is based o the value of the inheritance as declared by the heirs, which must be at a minimum equal to the value used for the property tax. For inheritances valued up to 2 million lei (US$800), the tax is 3%, but not less than 1000 lei; for inheritances between 2 million up to 5 million lei ($US 800 - $2000) the tax is 60,000 lei ($24) plus 2% over 2 million lei; for inheritances over 5 million lei the tax is 120,000 lei plus 1% of the amount over 5 million lei. An inheritance with a declared value of 4 million lei would pay the equivalent of $40 in inheritance taxes. With the probably very low declared values and tax values, the inheritance tax will not generate much if anything in net real revenues, when the cost of collection is taken out.

The potentially most noticeable property tax is the 2% transfer tax on the declared value of the property for relatively low valued properties, and up to 7% of the declared value for properties of highest value. The judets have the power to increase this rate by 40%, thereby raising the highest rate of 7% to 9.8% for the more valuable properties. This tax is paid to the notary at the time of the transaction. Since the declared value of properties appears to be not more, and usually less, than 10% of the market value, the effective transfer tax rate ranges between at most 0.7% - 1% of the market value for the highest valued properties. It is not clear how such market values are calculated, however. It is likely that the effective

rates of the transfer tax are negligible at present. It is also likely that the pressures on local government budgets will lead to moves to increase the assessed values of properties, particularly buildings, and thereby local government revenues.

Concerning other transaction costs, there is no up-to-date information available to the writer for their estimation. Such costs include notary, attorney, land surveyor and real estate agent fees. In France the total costs of a transaction such as a sale of a small house, including notary fees, would be about 15% of the purchase price. In the United Kingdom, such fees (including the cost of registration in the Land Registry, legal, survey and agent's fees) would be about 4% of the purchase price.

Conclusion: From the available information, transaction costs are at present relatively low compared to other countries, but they will almost certainly rise. Monitoring of these costs seems advisable, since if they become significant, they can have a dampening effect on transactions.

## 6. THE VALUATION OF IMMOVABLE PROPERTIES

Developing procedures for fair and transparent valuation of immovable properties is an important task. Taxation is one activity dependent on such valuations. Others include:

-- The State's acquisition of private properties which are acquired by the State for public purposes, so that compensation can be paid as required by the Expropriation Law.
-- The new ARDP being created to participate in agricultural land transactions needs to know when the asking price is within the acceptable range to permit the ARDP to bid for properties;
-- Banks need a way to assess values for properties used as collateral for loans;
-- Real estate agencies need guidelines for clients who wish to rent or sell properties;
-- Governmental agencies have land, apartments or other properties for sale;
-- Private owners and potential buyers have to agree on the fair value of properties;
-- People or companies who are contemplating the building of houses, apartments, or business sites need to have a basis for calculating the profitability of their investments;
-- Insurance companies which insure properties should know what a fair would be for insurance purposes;
-- Professional valuers of immovable properties need reference points to carry out their tasks.

A clear and strong need exists for a large and well trained cadre of immovable property valuers. Resources will be needed to prepare this cadre, which will probably be centered in a new government Valuation Service as well as in the private sector. This later set of people is organized into four professional associations:

The Association of Chartered Accountants and the Management Consulting Association are concerned mainly with business valuation.

The Society of Technical Experts, formed in 1990 and with 2,200 members in 40 judets has a section devoted to the valuation of land and constructions for court purposes.

The Romanian National Association of Valuers, founded in 1992, has more than 500 members in 12 judet branches, with 200 members registered as real estate valuers, and 300 dedicated to the analysis and valuation of businesses. This group of people have been almost entirely focussed on business asset valuation within the privatization program, using value tables or replacement value as their methods. Few people have experience with market based valuations.

Universities are beginning to develop courses to train valuers, but it is not clear at this point in time whether such programs are adequate for producing expertise in market valuation techniques.

If the present situation remains much the same as that described in the Munro-Faure (1994) report, the valuation expertise available for meeting the above listed demands is clearly inadequate, both in the public or private sectors.

## 7. FINANCING OF IMMOVABLE PROPERTY TRANSACTIONS

It is unlikely that banks will be able to offer long term financing for people to purchase immovable properties for some years. It is the case that banks accept immovable properties with adequate ownership documentation as guarantees for short term loans. At present, no bank will lend using a leased property as a guarantee.

Some options to outright mortgage lending could be explored, including:

-- the establishment of a mortgage guarantee fund to encourage private banks to assume the risks of lending for land purchases.

-- a program of title clarification and public ownership of land in and around urban areas which could be available for development;

-- focussing public infrastructure investments on such urban parcels of land which are available for development, and then the sale of such land to private developers at prices which would pay for the infrastructure investments but low enough to permit the building of low cost housing;

## 8. THE PROPOSED CADASTRE AND LAND REGISTRATION PROJECT

The creation of a modern immovable property registration system is clearly an essential element in a market oriented economy (see discussion in Section 9 below). The form of that system and the procedures to create it have been extensively considered by many Romanian and foreign specialists. Based on experiences in other countries, there are two strategic questions which should be addressed before the final approval of the badly needed and generaly very well prepared "Law Regarding Genal Cadastre and Land Registration":

1) Are people satisfied that there is adequate integration of the property mapping and legal registration components of the new system? This question is important for two reasons:

-- Romania's decision to adopt what is basically the traditional Central European model for immovable property registration (see Bose, 1995 for more on this model) should be informed of the problems of that institutionally bifurcated system which have been the cause of much distress and expenditure of funds in recent years in several European countries. For example, Austria has been investing several million dollars for the past 8 years in unifying the cadastral mapping institution with the land registration offices. Switzerland is investing $1.3 billion dollars in the modernization of its immovable property registration system, much of which is being devoted to correcting the problems which derive from there being two separate institutions. Hungary opted two decades ago to unify the cadastral mapping and registration offices. Romanians should be sure that opting for the traditional model is the best long run decision, and should not adopt a system with demonstrated problems as the best system for Romania.

-- Creating the information base for the new registration system, i.e., first registration of privately and publicly owned properties, will necessitate the launching of numerous field teams through the ONGCC and the OGCJ's, but as presently designed these teams would

focus primarily on the surveying and mapping of parcel boundaries. The parallel effort of locating and recording of documented rights to privatized properties is apparently proceeding independently through the Ministry of Justice.

It may be more cost effective for the field teams to validate both boundaries and documented information about rights to immovable properties, creating simultaneously the property maps and the land book. It may also be helpful for there to be a procedure for community examination of the results of this field work, the identification and correction of errors, and then the issuance of new ownership certificates for each property. These certificates would signify the final stage in the privatization process, and would certify the nature of ownership and other rights to each property, geographically locating each property by referencing the comprehensive parcel maps through the use of the cadastral number.

2) Is it the duty of the State to finance highly precise and monumented parcel surveys?

The draft law wisely does not specify the technical requirements of parcel maps for the registration system. However, there should be some discussion of these requirements to be sure that the mapping effort proceeds as rapidly as possible. Under Romanian conditions, it may be financially justifiable for the State to make investments in highly precise and monumented parcel surveys. On the other hand, who would benefit from these investments? For the majority of newly created properties, it is highly likely that neighbors have no doubts as to where the un-monumented boundaries are and there are relatively few boundary conflicts. Moreover, for a large number of parcels, the cost of precise and monumented boundaries will approach the value of the properties. In the interest of speed of registration, it may be better to focus on the registration of rights, with the minimum expenditure possible on the rapid production of parcel maps.

In regard to parcel mapping, it may be advisable for the State to produce property maps which are indicative of the locations of boundaries, with precision derived from the scale of the maps. For those owners whose properties have a high value, or when there is some private conflict among neighbors, the owners themselves would assume the costs of precise and monumented surveys.

There are also some points in the draft law (Chamber of Deputies version of 26.06.95) which are unclear. See Annex 5 for a discussion of these points.

## 9. ELEMENTS OF AN IMMOVABLE PROPERTY MARKET DEVELOPMENT STRATEGY

The pre-condition for creating markets in immovable properties is the creation of the right of people individually or in some collective unit (association, family, company, cooperative, etc.) to buy and sell, rent, lease, inherit, give as gifts immovable properties. This right to transfer part or all of the "ownership" bundle of rights and responsibilities, is one of the rights in that bundle. Law 18/1991 and other laws provide the mechanisms for the massive creation of private ownership of properties, and thereby potentially creating the markets in these properties.

However, the massive privatization of immovable property ownership does not mean that the marketplace in immovable properties automatically and instantaneously exists. More importantly, privatization while necessary for markets to function, does not assure:

-- that markets in immovable properties are dynamic,

-- that access to the marketplace for properties is open and democratic, or

--that the new owners of properties exercise their responsibilities as owners to assure that future generations have a richer resource base than they acquired.

These are the challenges facing the institutions which structure the marketplace in immovable properties following their privatization. Some of these institutional initiatives in the Romanian context could be the following:

(1) Market dynamism institutions

Several programs are needed to assure that immovable property markets work dynamically:

-- A comprehensive system for identifying the true owners of the privatized properties.

Unless the true owners are easily known, potential buyers, lessees, renters, and mortgagors will not offer to acquire the ownership or use of properties. This public identification of the true owners of immovable properties is one of the main functions of the immovable property registration system.

At present Romania is using one of the most primitive registration systems, the private contract type where the buyers, renters, and mortgagors investigate the rights of persons claiming to be owners, and if satisfied, agree to transactions which are usually enshrined in written private contracts, kept by the buyers or users of the properties.

This system is adequate when transactions are infrequent and mostly among people who know each other and have personal experience with the recent privatization programs. As the number of transactions increases, as time passes and memories grow dim, as the private contracts of previous years get misplaced, and as inevitably happens doubts arise about the ownership claims of those who present themselves in the marketplace as owners, such a system will become increasingly chaotic. The marketplace will shrink. Conflicts over the ownership and use of immovable properties will increase. Moreover, owners will not invest in their properties since they cannot be sure that they will be able to recover their investments in the future, leading to general economic and environmental decline.

To avoid this morass, Romanians have developed a proposal for a cadaster-registration institution, to record rights to all immovable properties as they have emerged from the privatization programs and as they change over time. Obviously this institution is a critically important component of the immovable property marketplace.

Is the proposed institution and information system cost/effective, i.e., will it achieve the goal of identifying true owners within the financial constraints of the country for the next few years? Probably not, since the methods of cadastral surveying and mapping may be more appropriate to an established and flourishing market economy and since the draft law creates two separate institutions (cadaster and legal registration on the model of the Middle European systems) whose coordination will be costly to achieve. These institutional imperfections will be corrected and the registration system will be made operationally to correspond with available resources, since the institution is so important and will become obviously important as the years pass.

-- Marketplace Professionals

Immovable property transactions can be complicated. Financing is often difficult. Contracts are needed to adapt to the deal which the parties have negotiated. Some people who may not know about these complications should be protected from swindlers.

People who are trained and experienced in the various aspects of immovable property transactions have to be available to the people engaged in the 5-6 million transaction which will occur annually. Such people include:

* real estate agents for informing buyers and renters, of the availability of properties for buying or renting,

* people capable of drawing up transaction contracts, such as notaries and/or attorneys,

* people who know how to estimate the market value of properties.

* people who know how to describe the geographical location and shape of parcels of land and constructions, such as land surveyors or geodetic engineers.

Such professionals are <u>not</u> always needed in every transaction. People tell each other about properties for sale or lease and do not use real estate agents. The laws governing transactions can permit the use of simple forms which are easily understood and yet contain the essential information for sales or lease contracts, obviating the need for notaries and lawyers. Buyers and sellers can themselves investigate market values for properties without consulting professional valuers. People can sketch and describe in words the boundaries of their properties without the help of a geodetic engineer. Moreover there is the precedent in other countries that some of these professional groups will manipulate the laws to make themselves essential in every transaction, will require complicated and expensive procedures, and will set arbitrarily high fees for their required services.

Nonetheless, the above mentioned market professionals are important institutional bases for dynamic immovable property markets.

-- Clarification and simplification of the rules governing transactions. The many privatization programs have created various immovable property segments with different rules of access to and use of properties. These sets of rules will be reviewed and made as compatible and simple as possible.

-- Completion of the privatization programs

Markets will not work without marketable titles. There are a number of initiatives which should be given priority:

* Completion of the issuance of legally valid titles to the privatized land and buildings;

* Clarify the ownership of partially restituted buildings which contain privately owned apartments and businesses;

* Develop and implement condominium legislation and assist in the organization of associations to manage common areas of buildings;

* Clarify the ownership, management, use of communal grazing and ex-state farm land;

* Correct errors of privatization programs;

* Clarify the ownership rights to dwelling units and surrounding land in villages;

* Clarify ownership, management, use of previously privately owned urban land which has not been restituted.

* Define the rights of various types of associations and commercial companies to own and lease land.

* Clarify and legalize the easements emerging on the privatized parcels of land, rural and urban;

* Clarify ownership or use rights to land surrounding buildings associated with privatized enterprises, and access rights from roads to such buildings.

* Develop flexible rules for the legal descriptions of immovable properties, so that the costs of surveys can have a relation to the value of the properties.

-- Clear identification of publicly owned properties and the rules for their public and private use. The push to privatization has to be matched at some point by a clear re-definition of how publicly owned immovable properties are to be held, divested, and managed.

-- Rapid and equitable resolution of conflicts among different people who claim rights to the same properties. In some countries a special administrative tribunal has been created to relieve the pressures on the courts by the very numerous conflicts among people concerning the facts of ownership and use of land. Such a tribunal would operate with more flexible rules of evidence and would include as members of the tribunal land specialists other than just lawyers.

-- Clear and equitable rules and procedures for the combination of properties into unified enterprises, while protecting the ownership rights of the owners of the component parcels. The willingness of recipients of land to combine their parcels with others has been partially matched by legal rules for the structure and functioning of such enterprises, but the importance of informal associations indicates that there may be more work to be done.

(2) Democratic Access to the Marketplace of Immovable Properties

For markets to work properly, there have to be many buyers and many sellers. Moreover, in order to avoid tensions due to the polarization of society the marketplace of immovable properties has to be open to all the people, those with capital and those without, all segments of the country:

-- Special programs for young people, and/or people without capital to assist their competing for immovable properties (mortgage guarantees, subsidized loans for beginning farmers, state stimulated land development projects, the ARDP ideas);

-- Removal of biases against certain social groups' rights to buy and rent properties, where such biases are susceptible of removal;

-- Protection of the rights of family members, especially spouses, to participate in transactions to

avoid irresponsible behavior of family heads;

-- Simple rules for family management of immovable properties when the family head is absent;

(3) Future Generations' Rights to Immovable Properties

The rights of future generations to a safe and productive environment require consideration in the design of immovable property market institutions.

--Avoidance of land degradation

Buyers usually have a more optimistic view of the value of properties than the sellers, either because the buyers have plans to improve the profitable use of the properties, or because they calculate that the rates of increase of property values will be higher than rates of increase of other investments, or because the buyer needs the security of possession more than the seller.

For those buyers who hope to improve the profitable use of the properties which they acquire, some may have very short term intentions of recouping their investments, which can lead to destructive land use practices. Buyers have to be aware of the limitations on their use of the land, and these limitations have to be more real than just legal expressions of empty desires. How to make private, immediate interests converge with the interests of future generations is a challenge. A strategy for meeting this challenge is an integral part of the immovable property market institutional development strategy.

--Redefinition of ownership rights

Another component of this strategy is the clear and active consideration of what land should be exempted from normal market activities, such as green belts around cities or lands where environmental conditions are fragile or biological diversity is seriously threatened. In such areas the "development rights" of private owners will have to be limited, but in ways which is perceived as fair and not as a confiscation of private ownership rights.

This structure for the limitation of development rights should be rapidly considered, while people are learning what private ownership means of properties in which they have not invested much personal, private capital.

--Community management of forests and pastures

Substantial portions of the forests and communal grazing land are being used by private people and companies under different arrangements with different entities of public administration. Finding new ways to empower local communities, whose members have themselves interests in using these resources, to benefit from and monitor the private concessions, leases or rentals of publicly owned pastures and forests.

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ANNEXES TO THE STUDY OF LAND MARKETS IN ROMANIA

## ANNEX NO. 1: THE AGENCY FOR RURAL DEVELOPMENT AND DEVELOPMENT PLANNING

### A1.1 Objectives of the Agency

The Introduction to the draft law creating and regulating this Agency states the concerns which led to its creation:

> --The equipment and other capital items formerly managed by the Cooperatives were not transferred to the new owners of the land following the break-up of the cooperatives;
>
> --The new owners are not able to acquire equipment for several reasons: (a) they cannot finance the acquisition of equipment from their own resources due to the high unit cost and low family income; (b) foreign investors with capital are lacking who are interested in making such investments; (c) farmers cannot borrow to acquire equipment due to the high interest rates;
>
> --Large scale enterprises are needed to compete with similar enterprises in Western countries.

While not expressly stated, from the nature of the proposals it can be inferred that the concerns of the drafters of the law include some of the problems produced by the way the lands of the ex-cooperatives have been privatized, namely:

> (1) extreme small size of the newly created land holdings, averaging 1.9 hectares, with the creation of over 20 million parcels each averaging less than one hectare (.64 hectares according to Bulgaru in a 1992 study of 500 villages, and less than 0.5 hectares according to 1994 data reported by Munro-Faure);
>
> (2) the passing of land ownership for a significant proportion of the productive agricultural land into the hands of people with limited abilities to farm, namely:
>
> > -- urban residents far from the land geographically and in terms of their knowledge about agriculture,
> >
> > -- pensioners with limited energy for the now manual or animal based agricultural labor system (the average age of all recipients of land was 53.7 years according to the 1991 Romanian Statistical Yearbook).
> >
> > -- salaried or wage workers with limited time for such activities.
> >
> > A study of 500 villages in 1992 by the Romanian Academy of Agricultural and Silvicultural Science found 43% of the new private owners resident in cities, another 39% were pensioners or salaried or wageworkers, and only 18% were full time farmers physically and intellectually capable of working the land.

### A1.2 Summary of Articles of Law 18/1991 whose violation imply the transfer of land to the Agency

> --Article 18 provides land to people who had not contributed land to cooperatives or who had worked in cooperatives without being cooperative members, if they establish residence in the locality. Article 18 also provides usufruct rights to agricultural land for people who work in commune public services, if they have no agricultural land and only while they work in these services.

--Article 20 provides land in localities with surplus agricultural land under the condition that the recipients establish residence in the localities, cultivate the land received and relinquish other property.

--Article 39 provides land in mountain zones to young peasant families, who establish households there, raise animals and use the land "rationally".

--Article 47 states that individuals (or legal entities) which are both not Romanian citizens and do not reside in Romania cannot own land. If such individuals or entities inherit land or if they acquired ownership of land before the effective date of Law 18, they must sell the land. If they fail to meet this requirement, and if the mayor of the locality officially notes this failure, the land automatically becomes state property under the administration of the Agency.

A1.3 Needed Clarifications in the Wording of the Latest Draft

1) Article 4, paragraph 2, item 3 requires that the potential sellers provide ARDP with a copy of the land ownership document, or if it is the case, the ownership certificate. The translation does not provide the Romanian legal terms for these two documents, although the first is probably titlu de proprietate. Using any other document may present some difficulties in completing the transfer of ownership.

2) Article 4, paragraph 2, item 6 requires that the potential sellers provide the ARDP with information about any obligations encumbering the land, while item 8 requires that the sellers provide evidence from the local court that the property is not involved in a litigation. It would be necessary for the ARDP to independently ascertain the existence of any encumbrances or litigations, regardless of what the potential seller would say or provide. Other than requiring a seller to prepare a declaration (presumably notarized) on these points, it seems a needless expense for the potential sellers to get certifications from courts or elsewhere about encumbrances or court litigations.

3) Article 4, paragraph (4) requires the ARDP to inform the co-owners, neighbor owners and lessees about the intention to sell within 15 days of the sellers' notification of the ARDP. The draft is not clear about what happens if the ARDP does not do this notification within the 15 day period. The danger that the already long process may extend indefinitely if the ARDP is not highly efficient. It may be sufficient in the regulations for the law to use Article 5, paragraph (3) in such instances, which says that the preemption right is extinguished and the sale becomes free under the conditions communicated to the ARDP.

4) Article 6 paragraph (3) requires that the price accepted by the ARDP in the exercise of the preemption right cannot be less than the value of the land as determined from "normative acts", which presumably means existing tables of land values. Since it is likely that in the near future property valuations based on market prices for similar properties, it would be preferable to enable the ARDP to use the assessments done by independent licensed valuers, once such professionals are trained and licensed. In any case, a table will have to be interpreted by someone, and it would be desirable to specify who would do that interpretation, perhaps in the regulations to the law. The wording used in Article 3, paragraph 1-g might be better than that used in this Article 6.

5) Article 10 in the previous draft restricted the alienation of the land and its subdivision.

In the new draft it is noted that this article's provisions are to be found in the new draft, Article 14, but in the available translation no such items are there. This may be a problem of the translation, or there may be a section of the draft mission. Such restrictions would be important to assess if they are in the new draft.

ANNEX NO. 2: FRANCE'S SAFER (Sociétés d'aménagement foncier et d'etablissement rural)

(Adrian Konini prepared the draft for this report)

Societies of SAFER and their ownership of immovable properties in rural areas have been created following approval of the Law "On Agricultural Guidance" dated on August 1960. These societies are created in the model of anonymous societies, but at the same time they have a special status which is in accordance with their public interest mission, by being non-profit.

Their origin has to be seen in the economic and geographic context of France at the time of the approval of the Law. In the beginning of 60's the agricultural production in France was considered to be low, agricultural areas had a high density of population and the demand for buying agricultural land was still high. On the other hand the financial situation (value of land had been increasing faster than inflation) stimulated land speculation. This situation put the state under the pressure of small farmers who were threatened by land speculators.

From that moment SAFER became aligned with various institutions which engaged their activity in rural areas as instruments to pursue a policy supporting small farmers.

Initially their mission was extended only into agricultural areas, and focussed on the land distribution as it affected the use of the land. Subsequently, the object of SAFER has been extended beyond agricultural questions into broader rural development issues and the protection of the environment in these areas.

Currently, 29 SAFER exist, one in each region, and they keep in contact with the respective departmental services. The Administrative division of the territory of France consists of 36,000 komuna, 110 departments, and 29 regions. In total for the 29 SAFER offices, 800 experts of the SAFER are currently working. The total value of transactions by the SAFER in 1994 was about US$600 million, representing about 25% of the total value of rural land market transactions in the country.

In Paris the National Federation of SAFER (FNSAFER) is located, which has the objective to federate of all the SAFER of France in order to coordinate overall policy, to stimulate and protect the interests of SAFER of France, and also to represent SAFER to the government and various national institutions. Also, FNSAFER publishes a quarterly journal "Regard sur le Foncier".

**Juridical Form:** Law does not prescribe the form of SAFER nor its status. In practice all SAFER have adapted the form of anonymous societies. These societies are governed by the provisions of the Law on Commercial Companies. The Law of 1960 which created the basis of the SAFER forbids them to engage in profit oriented activities.

**Social Capital** of SAFER is created by the participation of various Departmental or Regional agricultural entities where the particular SAFER operates: chambers of agriculture, departmental federations of sindicats of agricultural production, mutualities and different institutions which give credit for agricultural field, etc. All public, legal and local entities (communes, departments and regions) can participate in the social capital of the Regional SAFER.

For the year 1994 the social capital of the 29 SAFER reached the figure 161 million FFR:

28% Agricultural Credit
27% Local Collectives (communes, municipalities, regions)
25% Chambers of Agriculture
20% Other National Organisms CNASEA - SCAFER

**Administrative Aspect:** SAFER is a company over which the state exercises permanent control. The

establishment of SAFER should occur after the approval of the Minister of Agriculture and the Minister of Finance, who approve the appointment of its President, administrative council, activity area, status, etc.

The control of State on SAFER is permanent and strengthened by the presence of two representatives of state, one from the Ministry of Agriculture and the other from the Ministry of Finance.

In addition to permanent oversight, they do the preliminary approval for any sale contract in excess of 200,000 FFR, project which transfers the ownership, or installation of exploiters, and for all applications of the right of **preemption**[1].

**Mission**: The mission of SAFER is based on the logic of general interest. Their function is: "mostly the increase of area for agricultural and forest use, to facilitate the cultivation of land, to install and keep farmers on the land, and to carry out improvements on parcels" (rural code art.L.141 and art. R 141-1)

To achieve this objective SAFER intervenes in the land market, by buying land which is freely offered for sale by its owners. After it buys such land, it transfer that in ownership to new users (retrocedent), who are installed on it where by the case SAFER has done works of rural development.

The distribution of land is performed by taking into consideration several specific elements of the region where SAFER does activity: availability of land, density of population, traditional productions of area, etc. Based on this assessment, every SAFER determines the minimal area of installation (SIM) thereby assuring that every household installed achieves a reasonable annual production.

The law of 18 August 1962 (art 7 changed to L 143 -1 K.R.) which is considered as a compliment of the law on "Agricultural Orientation" provides SAFER with the right of preemption. This additional right for SAFER allows them to control the projects of transferring the ownership of objects in rural areas and orientate in a more beneficial way the impacts on land tenure by having real means to control land speculation.

It has to be stressed that the activity of SAFER is performed in general economic context and suited continuously to the changes of economy. In this context it acts as an enterprise which does not allow doing activity with risk or loss. Data indicates (see the graphic) that after 1982 a decrease of accumulated stocks starts, that is explained by the decrease in the value of land and an increase in the extent of urbanization in France creating a depressed agricultural land market.

**Management of acquired lands:** To facilitate the increase of values of agricultural lands, rural development and the protection of nature and environment, SAFER after acquisition of land or buildings on them, prior to their sale, can make investments in them. Such investments are focussed on specific improvements and are often done in agreement with the future owner. Also SAFER also plays a role for spatial reallocation of lands which it achieves through the process of **consolidation**[2]. SAFER exercise this right based on the art. L 121 of K.R. which foresees such intervening. During 30 years following the creation of SAFER, one agricultural holding in three has come under the management of SAFER.

SAFER can collaborate in the development of rural communes and also for protecting the nature and environment. Based on the authorization provided by the provisions of Law dated on 23.01.1990 (art. L 141-3 and art. 141-1), they can undertake certain operations in rural areas for re-orientating lands or

[1] Pre-emption means the exclusive right to be ranked first in the order of buyers of the land. By law: the action of purchase of something, mainly in the field or agricultural land, before that of another person.

[2] Consolidation: An operation whose goal is to create a uniform property for a person (tenant) through swapping parcels distributed to different owners.

buildings toward non-agricultural uses. These operations are made with the goal to give opportunities for economical development of communes outside of the agriculture domain, both in the tourism field and artisanal and industrial field, and also to preclude the negative impacts on landowners by carrying out projects with general interest e.g. highways, canals, airports, etc. For these kinds of projects the respective national companies keep in permanent contact with SAFER to coordinate the implementation of future projects.

**Studies concerning land management**: The article L 121 -16 of K.R. gives the right to SAFER to perform for the interest of third parties, all studies which are related to land management or evaluation of building site, and also to oversee the carrying out of works which are being done. Concerning the operations of agricultural, rural and forest land management that a Komuna undertakes (more often realization of infrastructure or joint equipment) SAFER can be engaged to both to carry out studies of feasibility and to take on the role of overseer of the project work.

In this context SAFER can be considered as an office of studies for the interest of organisms or komunas which want to perform works of development, or physical private persons which want data on the land market. It is considered as an office with much knowledge and experience in this field. During 30 years of activity about 450,000 studies have been carried out. A national communication network (single line, No. 3617 SAFER) responds to basic questions of any transaction concerning prices and their trends, and necessary procedures for preparing sales contracts. Data published concerning prices are collected by permanent contact with notaries. SAFER is considered as a competent and reliable observer of the immovable property market in rural areas.

By following transactions SAFER secure a collaboration with notaries and necessary demarches to fill the act of sale to the respective administrative institutions.

**Acquiring the land and the right of preemption**: SAFER can acquire land through free transactions as acting as any potential buyer for agricultural land put up for sale. Also SAFER is able to acquire land through the right of preemption. Most of the acquisitions are made through the mutual agreement of the parties involved. For the year 93 more than 92% of acquisitions have been made in this way, and only 8% of land area has been acquired by applying the right of preemption, although in previous years the proportion of land acquired by the SAFER's through the exercise of the right of preemption was closer to 20%.

It is important to note that preemption is not absolute, immediate or unobjectionable. It is a right of last resort, and is given to SAFER only after the approval of Ministry of Agriculture which limits the areas where this right can be applied. Its use is seen as an extreme measure that has to satisfy obligations determined by the law concerning the objectives of SUFER for installing or keeping the farmers in agricultural areas, and the fight against land speculators. A preemption done outside of the bounds of the law is considered invalid.

The procedures for exercising the right of preemption (exchange of information, legal fixing of price, publication and respective sanctions) are based on a large number of legal and by-legal acts and procedures.

**Limited period of ownership**: The Law stipulates that SAFER can not maintain ownership of land for more than 5 years. The Article L 142- 5 of K.R. determines the cases when this period can be extended to 10 years through a ministerial decision for certain operations which are related to forest areas, mountainous areas and areas where future projects of land management or urban planning are anticipated.

During the transition period of possession SAFER are authorized to take all necessary measures to provide keeping of property for use and production.

Disposition of SAFER property is made in to physical persons who request property, who want to install themselves in agricultural areas, or of legal persons (komuna or different institutions) which participate in the process of rural land management or which develop projects of general interest. For the year 93, 92% of dispositions were made in agricultural areas and more than 78% of disposed land made existing holdings larger and installed new farmers on land.

The procedures of disposition require that before the act SAFER is carried out a request for candidature be published (K.R. Art. L 143-3) (appel de candidature). Following procedures is made in a closed relationship with the offices of Municipalities and of Departments which are given all technical and financial data of immovable properties, the way of acquisition of land by SAFER (mutual agreement or preemption), the nature and the type of the process of land management if it is made, etc. Documents are examined by the departmental technical committee of SAFER which proposes to the Administrative Council that make decision.

It has to be stressed that the recent decrease of demand for agricultural land has led to the change of current practices of disposition, making the operations more careful and at the same time more time-consuming.

**Loan Operations**: The Law of January 23, 1990 is the legal provision which provides every land owners with the right to a loan, using land as a guarantee. For an area smaller than 2 times of minimal area of installation, the period of loan is up to 6 years and it can be renewed only once.

Under such an agreement, SAFER is obliged to pay to the owner an annual guaranteed income, returning the property to the owner once the period has completed. SAFER takes possession of the land and leases it out to another person.

In this case SAFER plays simply the role of a connector and the users are not in a direct relation with owners.

In many cases the property leased by a SAFER can belong to several owners, with the calculation that by consolidating and improving the properties a more productive economic unit can be created.

This relatively new formula has found a favorable response especially for farmers who retire, who faced with the immediate transferring of properties or loan in conformity with the right of farming lease, can choose this flexible solution.

Observing the key moments of the constituting of SAFER and its action in specific areas of the country leads to the conclusion that it is an instrument to follow the agricultural policy where the participation of the state is not small. It has to be stressed that France belong to those states where the presence of state in overall development policy is significant. This impact is more significant when it is related to the policy of urban planning development and the territorial development. The fight against land speculation, the implementation projects of general interest brought the need of applying the right of preemption, expropriation, consolidation, etc., and also establishment of institutions such as SAFER for rural areas and OEM for urban ones[3].

To SAFER we see two simultaneous aspects. First, it comprises an enterprise with financial activity (sale or loan) which does not involve economic risk taking. All transactions are carried out without financial risk, and it does not take over mortgage charge. Buying is made involving the person who the property

[3]Of course that these two institutions are different in many points, to both, constitution and action. It has to be stressed that the list of institutions which participate in developing urban or agricultural policy is long and diverse in ratio with the objective of their activity.

will be sold to, and the payment has to be made in conformity with certain rules. Secondly, it is an organization with political character (it does not have profit making as a purpose) which has as objective the land and objects management in rural areas. For this it keeps always in contact with local governmental entities by performing its activity proportionally with their programs of development.

The answer of the question whether SAFER has accomplished its goals or not, can not be black and white. The thoughts of experts in SAFER are that in the general context of agricultural policy in France SAFER has played its legally assigned roles. Up to the 1980's, its activity had been dynamic and necessary, and later its activity is re-defined in order to meet the requirements for the development of rural areas in France.

ANNEX NO. 3: **RURAL LAND TRANSACTIONS IN AUSTRIA**

(This report was prepared by Dr. Renatë Weihs-Raable, Notary, Vienna, Austria.)

## A3-1. INTRODUCTION

The acquisition of certain rights in respect of rural land is subject to an approval by a land transfer authority hereinafter referred to as "the Commission".

Each of the nine Austrian federal states (Vienna, Lower Austria, Upper Austria, Burgenland, Carinthia, Styria, Salzburg, the Tyrol and Vorarlberg) has its own statute dealing with the transfer of urban land as well as transfer of land to foreigners.

Although the statutes of the various states may differ in certain details, they are all based on the same principles.

This paper is based on the regulations of the real estate transaction law of Lower Austria of 1988 amended in 1991 and 1993.

## A3-2. DEFINITIONS

"rural land" is defined as agricultural and forest land being or marking part of an agricultural or forestry enterprise.

"Farmer" is a person who runs such an enterprise alone or together with his family and who earns his and his family's living by this work.

"Foreigners" are individuals having non-Austrian citizenship, companies, corporations and partnerships based outside of Austrian and Austrian based associations with a majority of members being non-Austrian citizens.

## A3-3. RESTRICTIONS

The following transactions inter vivos concerning rural land are restricted to prior approval by the Commission:

- acquisition of ownership including acquisition in auctions of the Execution Courts
- establishment of a so called 'usus fructus'
- lease of more than 2 hectare land
- lease of entire buildings.

Exceptions: acquisition of rural land for public administration or for the construction of streets, channels, harbors, electricity supply and gas supply as well as contracts between spouses and close relatives. i.e. (grand) parents and their (grand) children and brothers and sisters (in-law) in order to create condominium of spouses or to convey an agricultural or forestry enterprise within the family.

## A3-4. APPROVAL

Approval must be granted to transactions that are in compliance with the "the general interest in maintaining, promoting and creating efficient farming." Transactions are regarding as not being in compliance with the aforementioned criteria if:

- the buyer is not a farmer
- the interest in dividing the land to promote and/or create agricultural or forestry enterprises prevails over the use under the terms of the contract
- there are reasons to assume that the land is purchased only for profitably reselling it (divided or undivided)

- concluded from the acquirer's profession and domicile there are reasons to assume speculation by investment in urban land

- the consideration substantially exceed the usual market price without sufficient reason

- the reminder of the land owned by the seller after the transaction does not suffice for an efficient enterprise.

- the mapping system of an area would unnecessarily be

- the transaction obviously serves to exploit forest land.

A3-5. COMMISSIONS

A. District Commissions

District Commissions are installed by the Board of Administration of the district.

The commissions consist of

- the Head of the District Administration or a legally trained deputy
- a representative of the State Chamber of Agriculture
- two representatives of the District Chamber of Agriculture; one of them ought to be a representative of small owners
- a representative of the Board of Administration of the municipality where the land is located
(- a representative of the Chamber of Commerce if the land shall be used for commercial, industrial or mining purposes)

There has to be a deputy-member for each of the members. The members are not entitled to reimbursement for their expenses but not to any fees.

Procedures

Decisions are made by simple majority of votes in the presence of the chairman and at least three further members. The Commission has its seat and its meetings at the seat of the Board of Administration of the relevant district. Meetings are summoned by the chairman who has to forward the applications (copies thereof) to the members. The commission is entitled to all necessary investigation and to all assistance and services to be rendered by the authorities. Upon prior approval by the administration of the municipality where the land is located and by the District Chamber of Agriculture the chairman can decide without summoning a meeting whether a certain land is "rural land" or not.

Without summoning a meeting the chairman can upon prior request by the District Chamber of Agriculture approve or decide that a transaction is not subject to approval if within 4 weeks of notice none of the members has objected to the transaction and if there is no apparent non-compliance in the above mentioned sense (see supra 4).

Decisions have to be in writing and be signed by the Chairman. The Commission must keep minutes of its meetings.

B. State Commissions

State Commissions are installed at the seat of the Governor of the state. The state commissions consist of

- two legally trained officers of the state government as chairman and as reporter
- a judge
- three members of the State Chamber of Agriculture

(- a representative of the State Chamber of Commerce if the land shall be used for commercial, industrial or mining purpose.)

All members are free in their decisions and are not bound to orders of the authority they are working for.

Procedures

Decisions are made by simple majority of votes in the presence of the chairman, the judge and two other members.

The State Commissions decides appeals to decisions of the District Commissions. There are no further appeals against decisions of the State Commission except claims to the Supreme Court for Administration in case of alleged violation of civil rights by the decision.

Decisions have to be in writing and must be signed by the chairman. The Commission must keep minutes of the meetings.

A3-6. Appeals

The following parties are entitled to appeal a decision of a District Commission with the State Commission:

- the parties to the contract or in an auction
- the State Chamber of Agriculture
- the District Chamber of Agriculture
- the Chamber of Commerce if it did not approve the transaction or if it gave an adverse opinion
- the municipality if the decision was made regardless of municipality's adverse opinion or disapproval

A3-7. LAND REGISTER PROCEEDINGS

The decision of the Commission must be filed with the land register together with the application for registration of the relevant right otherwise the Registrar must not register the requested right. Therefore applications for registration usually contain this approval or a written statement of the municipality that the land in question is not rural land (and therefore does not require further approval.)

A3-8. COMMISSION FOR CONVEYANCE OF LAND TO FOREIGNERS

Definition see supra 2. The transactions as described above (see supra 3) require approval by the Board of Administration of the state in every case without restriction to rural land. The Commission has to decide over appeals against decisions of the Board of Administration. There is no further appeal against the decision of the Commission admitted except the claim to the Supreme Court as above mentioned (see supra 6.a.)

The Commission consists of

- a judge as chairman
- a representative of the State Chamber of Commerce
- two representatives of the State Government
- an officer of the Board of Administration of the State.

Decisions are made by the majority of votes in the presence of the chairman and four other members.

A3-9. FEES AND CHARGES

The fees imposed on the services of the commissions are fixed by decree of the Board of Administration.

A3-10. VIOLATION

Violations of the real estate transfer laws are fined up to of ATS 300,000 (US $30,000)

A3-11. INHERITANCES

The real estate transfer statutes do not apply to inheritances but only to transactions inter vivos (see supra 3.)

ANNEX NO. 4: PROBLEM ARTICLES IN THE LAW ON LEASING OF AGRICULTURAL LAND (LAW 16/1994)

The following problems with the law have been identified, using the general criteria of trying to minimize the legal constraints on the leasing of agricultural land. The possible solutions to each perceived problem are presented, with the purpose of stimulating discussion and not as the only possible solutions:

--who may and may not lease in or lease out their agricultural land:

Article 3: The lessee, if an individual, must be a Romanian citizen with residence in Romania; and if a legal entity must have Romanian nationality, headquarters in Romania and have farming as its purpose.

Problem: At some point it will be economically beneficial for non-citizens to be allowed to lease land. Such a clause deprives the country of investment capital, should other conditions encourage such investment.

Potential Solution: Policy statement that such restrictions are transitory.

Article 4: Farming regies autonomes, research and production institutes and stations, commercial companies and other units possessing or administering state owned land cannot lease out their farm land.

Problem: If such entities are having trouble administering their lands, it would be economically preferable for them to get management help from sharecropping or other lease arrangements. Prohibiting such arrangements can inhibit improvements in productivity.

Potential Solution: Distinguish between leasing and renting, with renting referring to use contracts of less than 5 years, and allow renting.

Article 18 says that civil servants and employees of entities which manage state owned agricultural land cannot lease-in agricultural land.

Problem: Such a prohibition can deprive the sector of management abilities, although during the transition phase, it may be advisable to avoid the undesirable exercise of influence of such people.

Potential Solution: Policy statement that such a prohibition is transitory.

--subleases.

Article 22 says that any sub-lease document is null and void.

Problem: Prohibiting sub-leasing may have negative effects, such as inhibiting consolidation and limiting the use of leaseholds for mortgages.

Potential Solution: Policy statement that such a prohibition is to be replaced by the permission of sub leases in accordance with the Civil Code or through a special mention that sub-leases would require the permission of the owner and the holders of mortgages.

--lease period

Article 7 says that lease agreements have to be for a minimum of 5 years, with some exceptions for tree-crop parcels and parcels smaller than 1 hectare whose owner cannot get inputs or operational capital, or who is absent or ill.

Problem: Five years may be too long for people to agree to who are not used to working with one another, and thereby may limit the use of leases. It is not clear why the state should specify a minimum period, rather than leaving such a question to the parties to the lease.

Potential Solution: Since there are already substantial exceptions to this clause, eliminate it altogether.

--right of lessees to purchase leased land

Article 9 states that the lessees have the right to purchase the land should the owner wish to sell, ahead of any other buyer other than a co-owner or neighboring owner.

Problem: This provision may inhibit the leasing of land, since owners may want the flexibility to sell at the best possible price, and since potential buyers will tend to be interested in land which is not being leased. This potential problem may be eliminated by the law on the ARDP, which would structure the list of possible buyers and sellers to include the ARDP, after the leaseholders, leaving owners no options to sell.

Potential Solution: Resolve in the final wording of the RA law.

Article 25 says that a person who is a stockholder in a company through Art. 36 of Law 18/1991 can lease land from that company for a minimum period and then will automatically become the owner of that land or its equivalent.

Problem: This procedure will probably lead to the breakup of the state farms in ways leading to the kind of fragmentation which is a problem for creating economically efficient enterprises. Such a procedure would also bring about this breakup of the ex-state farms sporadically, which could eliminate workers and other landless from access to such lands.

Potential Solution: Since the leasing does not appear to be mandatory, evaluate the desirability of the likely impacts and then issue a policy statement for or against its implementation. A potential complication is the procedure for the direct restitution of land to former owners as specified in the law for the Agency for Rural Development and Planning, rather than going through the leasing phase.

--tax obligation

Article 10 says that the owner (or holder of usufruct title) is liable for the payment of any land taxes.

Potential Problem: This provision may not be in agreement with the plans of the Ministry of Finance, which in other countries has preferred that the "beneficial user" of the land pay the tax, and not necessarily the owner.

Potential Solution: Consult with Ministry of Finance.

--rent amount

For the most part the law leaves the amount of rent and the form of payment (in kind or in cash) to be defined in the contract. However, Article 16 says that the rent to be paid in money will consist of the Lei equivalent of a particular product or products.

Problem: Introduces complexity into the lease contract, for defining the rent to be paid, which normally would be the responsibilities of the parties to the contract. It is not clear what benefits such a clause produces.

Potential Solution: Article 16 wording does not appear to mandate the use of the product value procedure rather than simple cash rent. If such is the case, do nothing and let people write their own contracts.

--what happens upon the death or disabling of either party

Problem: The law does not specify what happens in these cases.

Potential Solution: Check to see if the Civil Code covers such cases. If not, either amend the law to include such a clause, or produce and publicize a model lease with such a clause, and advise notaries and others involved in advising those who lease agricultural land about its desirability.

ANNEX NO. 5: SOME PROBLEMATIC ARTICLES IN THE DRAFT LAW REGARDING GENERAL CADASTRE AND LAND REGISTRATION

There are some points in the draft law (Chamber of Deputies version of 26.06.95) which are unclear:

1) Article 1, the definition of "immovable property" in the English translation seems strange, i.e., "the parcel with or without buildings on it". What about apartments? Would they be included in this definition? Clearly they should, as implied in Article 48 of the 26 June, 1995 version. Also the definition of "parcel" as "a land area accurately determined, which has a single category of use, identified by a cadastral number, having one or several owners" is problematic. The "category of use" concept is of little relevance to the definition of a parcel for a registration system. Rather the definition should be something like "a bounded area of land with a homogeneous ownership". A piece of land which is owned by two people, where part is used for housing and part for crops would be a single registered parcel, not two.

2) Article 2, item d) and other references in the law to integrate property taxation in the cadastral-registration information system. This will produce a public resistance to the creation of the registration system. Gathering information for tax purposes should be considered as a specialized cadaster and as a separate activity which is done after the registration system is functioning.

3) Article 49 establishes a special cadastral register for publicly owned immovable properties in the private domain. It is not clear if such properties are to be included in the normal registration system, with an land book entry for each. If not, why not? Presumably the property maps will be comprehensive, with property numbers for every parcel, so it seems that the registration information should be likewise comprehensive. Especially if there are different public agencies which will exercise control over the use and disposition of public properties.

4) Chapter II states the required procedures for first registration, which places a great burden on the land book judge. The law might well include the authorization of the land book judge to nominate assistants to carry out the first registration procedures for the huge number of properties which must be registered as quickly as possible over the next few years.

5) Article 67 which deals with sanctions specifies the fines in lei for different infractions. Since inflation makes it necessary to change fines easily without having to amend the law, a more flexible method is needed for modifying fines.

Draft 1
27 November, 1995
D. Stanfield
Terra Institute

**ANNEX 6:**

**A NOTE ON LAND MARKET POLICY OPTIONS IN ROMANIA**

Romania has embarked on the path toward a market oriented economy. To lay the foundations for the operation of land markets, numerous programs have been implemented to establish the widespread private ownership of land and buildings attached to it, i.e., immovable properties, including the right to transfer ownership through sale or use through renting and leasing. As many as 37 million separate, privately owned immovable properties have been created since 1991.

Making the markets in such properties function well is clearly on the agenda of the country. There are several immovable property market policy options which are being discussed to achieve important economic and social objectives. The objective of this note is to contribute to this discussion by identifying constraints to the development of dynamic and effective land markets in the rural areas in Romania. A more extensive treatment of land market issues is available in "Study of the Romanian Land Market".

1. THE AGENCY FOR RURAL DEVELOPMENT AND PLANNING (ARDP)
The problems identified as justifying the creation of the ARDP are certainly constraints on Romania's economic well-being, and the objectives of the ARDP to find solutions to these problems are certainly desirable (See Study, Annex 1 for a summary of these problems and ARDP objectives). The draft legislation has been carefully prepared.

Of relevance for this note is the draft law's empowerment of the ARDP to buy land from private owners. Whether the ARDP should be empowered to participate directly in the land market is not discussed in this paper, other to repeat the obvious caution that it is very difficult to create a sufficiently agile and wise governmental agency for effective land market participation in a country undergoing such an extensive reduction and redefinition of governmental economic activities.

It should also be noted that while difficult, such a role is not impossible. The SAFER in France (Sociétés d'aménagement foncier et d'etablissement rural) which have bought, developed and sold land for agriculture since 1960, as well as some urban land development corporations with similar functions in urban contexts in other countries, do appear to have been effective.

Two topics are of interest in this note: (1) some needed clarification in the language of the sections of the draft law which deal with ARDP's land market activities; and (2) some suggestions for the gradual implementation of the land market aspects of the draft law, once it is approved.

--Needed Clarifications

1) Article 4, paragraph 2, item 3 requires that the potential sellers provide ARDP with a copy of the land ownership document, or if it is the case, the ownership certificate. The translation does not provide the Romanian legal terms for these two documents, although the first is probably titlu de proprietate. Using any other document may present some difficulties in completing the transfer of ownership.

2) Article 4, paragraph 2, item 6 requires that the potential sellers provide the ARDP with

information about any obligations encumbering the land, while item 8 requires that the sellers provide evidence from the local court that the property is not involved in a litigation. It would be necessary for the ARDP to independently ascertain the existence of any encumbrances or litigations, regardless of what the potential seller would say or provide. Other than requiring a seller to prepare a declaration (presumably notarized) on these points, it seems a needless expense for the potential sellers to get certifications from courts or elsewhere about encumbrances or court litigations.

3) Article 4, paragraph (4) requires the ARDP to inform the co-owners, neighbor owners and lessees about the intention to sell within 15 days of the sellers' notification of the ARDP. The draft is not clear about what happens if the ARDP does not do this notification within the 15 day period. The danger that the already long process may extend indefinitely if the ARDP is not highly efficient. It may be sufficient in the regulations for the law to use Article 5, paragraph (3) in such instances, which says that the preemption right is extinguished and the sale becomes free under the conditions communicated to the ARDP.

4) Article 6 paragraph (3) requires that the price accepted by the ARDP in the exercise of the preemption right cannot be less than the value of the land as determined from "normative acts", which presumably means existing tables of land values. Since it is likely that in the near future property valuations based on market prices for similar properties, it would be preferable to enable the ARDP to use the assessments done by independent licensed valuers, once such professionals are trained and licensed. In any case, a table will have to be interpreted by someone, and it would be desirable to specify who would do that interpretation, perhaps in the regulations to the law. The wording used in Article 3, paragraph 1-g might be better than that used in this Article 6.

5) Article 10 in the previous draft restricted the alienation of the land and its subdivision. In the new draft it is noted that this article's provisions are to be found in the new draft, Article 14, but in the available translation no such items are there. This may be a problem of the translation, or there may be a section of the draft mission. Such restrictions would be important to assess if they are in the new draft.

--Practical problems in implementation

To achieve its objectives, the ARDP will need substantial support from the state budget, at least during the first few years of its operation, and a strong initial effort at staff recruitment and training.

The French SAFER's, a similar institution, operate in 29 Regions with a staff of approximately 800, requiring an annual state budget support of US$11 million (see Study, Annex No. 2 for a description of the SAFER). Moreover, the decline in the demand for agricultural land in France during recent years has led to a declining trend in price, which makes it financially difficult for the SAFER's to buy land and then re-sell it at a sufficiently high differential to be able to finance its operations. Although land prices in Romania appear to be rising faster than inflation in recent years, a stagnant period of agricultural land prices may occur, until or if agricultural becomes sufficiently profitable to attract investment capital. Such a situation would add to the financial problems of the ARDP.

Careful consideration is worth giving to the gradual launching of the ARDP so as to minimize this potentially large demand on the budget and to permit the build up of the number and technical training of staff. Alternatives for the implementation of the ARDP should be explored, including the following:

1) Delay the implementation of the pre-emptive right for land purchasing for a few years, allowing land market participants to get more experience with the market values of land of different sorts and in different places. During this initial stage the ARDP could focus on building a system for gathering information about the market values of immovable properties through agreements with local notaries. This information could be offered to interested people and agencies (see Annex 2 for a description of the information functions of the SAFER in France.)

Once the financial and staffing status of the ARDP is on firm footing, and it is able to meet the requirements of the law for purchasing land, it could make offers to buy which could only be superseded by an offer from a higher priority potential buyer. It may turn out that the pre-emptive right of land acquisition may be rarely exercised, as in France, with the ARDP focussing on its many other responsibilities, and only acquiring land through the direct negotiation with potential sellers when there is a clear need and an objectively attractive price.

2) For encouraging the sale of land to neighbors, co-owners and leaseholders, a temporary Government decision could be issued requiring people desirous of selling arable land to post the availability of the land for purchase in a prominent place in their localities for a period of 15 days (or some other period), with such posting validated by the mayor of the locality.

Once a sale has been agreed upon between the buyer and the seller, the notary involved could require that the seller provide a notarized statement that the seller's selection of the buyer followed the priority of co-owner, neighboring owner, and leaseholder, and that none of the people at a higher priority level agreed to buy at the price and under the conditions agreed upon with the potential buyer. The penalty for the seller making a false declaration could be the threat of annulment of the transaction within a prudent period of time following the sale. This threat would give an incentive to the buyer to encourage the seller to follow the provisions of the law and not collude in making of false declarations.

Such procedures would provide at least some assurance that the objectives of the draft law were being achieved without having to hire a large staff and without having the ARDP intervene in the land markets. The costs for the Notary for assuring the compliance of the seller with the law could be built into the fee the notary charges for drawing up the sale contract.

--Other Possible Market Policies

One of the main problems of agriculture in Romania is the holding of land by people who are unable to farm it effectively (with a large proportion of owners being distant urban residents, of advanced age, or holders of full time wage jobs). While this is one of the problems due to be corrected by the proposed ARDP for Rural Development and Planning, should the present debate over that ARDP limit its functions to the management of state owned land (in the private domain) and information provision about the operations of local land markets, this problem would in large part remain.

If in fact this pattern of landholding creates difficulties for the holders, it should result in a desire on the part of such holders of the land either to rent it to someone who could use it more productively, or to sell it, i.e., some land market transaction. Market transactions can occur when the owners want to rent out or sell, and when some other persons want to rent in or buy. Transaction are encouraged by policies:

-- which facilitate the confidence of the parties in the transactions, and

--which affect the motivations of the parties to engage in transactions.

Some options for encouraging the operation of land markets are:

* Registration System

Concerning the question of confidence, a functioning and well viewed registration system is very useful, since that system will provide legal evidence as to the ownership of immovable properties. Such a system is the subject of the draft Law Regarding General Cadastre and Land Registration, and requires little comment other than to urge its rapid establishment (See Section 4 of this Note).

* First Registration Process to Cement Ownership

Following massive privatization of immovable properties, it is wise to remove lingering doubts about who owns the land and thereby the right to rent out or sell. The first registration of ownership employed to create the new registration system could be helpful in this regard by:

--making the correction of privatization "errors" (such as simply misspelling names or the more complicated ones such as the granting of ownership rights to a property by one privatization program to one person, and by another program to another person, or the omission of boundary descriptions in the privatization documents) an integral part of the work of the registration field teams;

--securing local community validation of the first registration results through their public display and correction;

--issuance of new certificates of ownership once local community member are in agreement about what people own what properties.

Such functions of the Cadastre and Registration program should be explicitly considered and programmed into the field work required for creating the new system.

* A Land Tribunal

The creation of a special administrative Land Tribunal could be considered to help resolve disputes over ownership or boundaries which linger after the initial privatization programs are more or less completed and which clog local courts. Such a tribunal would not be part of standard court structure in the sense that the judges would be respected local people with knowledge about land matters as well as the law and not necessarily lawyers, and the tribunal procedures used would stress mediation rather than deducing which claimant is right and which is wrong.

* Motivation of Buyers to Buy

Concerning the question of motivating participants in land market transactions, policy options for motivating the buyers (in addition to general economic policies) would include the reduction of transaction costs which the buyer pays as well as access to capital needed for the transaction. The transaction cost question needs some further monitoring (particularly the real value of transfer taxes--relatively low at present, and the fees of notaries which may be significant, and who pays). Access to capital depends on bank lending policies as well as foreign exchange transfer policies which affect the flow of family remissions of capital.

* Motivation of Sellers to Sell

Policy options for motivating the sellers also include the reduction of transaction costs which the sellers pay as well as possibly the increase of some of the constant costs they incur from holding onto a property which is not producing much income. A frequently used modification in constant costs would be the real increase in property taxes (apparently very low or non-existent at present). Whether such taxes should be imposed mostly on the land or mostly on the improvements on the land should be explored. Also the timing of implementing significant property taxation is important. It should not be introduced until the registration effort is mostly completed.

* An Austrian Idea

If these land market "influencing" policy options are not deemed sufficient to get the land into the hands of those who will make it productive and not held by people primarily for speculative purposes, another alternative could be some version of the Austrian approach (See Annex 3 of "Study..." for a description of the Austrian approach to rural land markets). The Austrians use local land commissions, which review proposed sales and decide whether to approve the transactions. Information is gathered from the proposed buyer and from the seller to enable the commission to make a decision. The proposed transactions are not approved if:

- the buyer is not a farmer
- the interest in dividing the land to promote and/or create agricultural or forestry enterprises prevails over the use under the terms of the contract
- there are reasons to assume that the land is purchased only for profitably reselling it (divided or undivided)
- concluded from the acquirer's profession and domicile there are reasons to assume speculation by investment in urban land
- the proposed payment substantially exceeds the usual market price without sufficient reason
- the reminder of the land owned by the seller after the transaction does not suffice for an efficient enterprise.
- the transaction obviously serves to exploit forest land.

Compared to the ARDP idea, this approach has several positive aspects: (1) the commission's task compared to that of the ARDP is relatively simple, based on objective criteria as to who is a farmer, or could be a good farmer; (2) the number of bidders is large, excluding only those who are not farmers or who are obviously intent on speculating with the land, thereby minimizing the risks of collusion among the potential buyers to defraud the seller, and making lending agencies less concerned about their abilities to dispose of any land acquired through mortgage foreclosures; and (3) there is no drain on the public treasury for the purchase of land.

2. THE LAW ON LEASING OF AGRICULTURAL LAND (LAW 16/1994)

Encouraging the leasing of land to help assure that the land is in the hands of those who can make it most productive is an important policy objective. Law 16/1994 regulates the leasing of agricultural land. The general policy objective is to minimize constraints on the leasing process, letting the lease agreements define the desires of the parties to the lease.

The law, however presently establishes certain limitations on such lease contracts, some of which seem problematic, as noted below. Possible solutions to each perceived problem are presented, with the purpose of stimulating discussion and not as the only possible solutions:

--who may and may not lease in or lease out their agricultural land:

Article 3: The lessee, if an individual, must be a Romanian citizen with residence in Romania; and if a legal entity must have Romanian nationality, headquarters in Romania and have farming as its purpose.

Problem: At some point it will be economically beneficial for non-citizens to be allowed to lease land. Such a clause deprives the country of investment capital, should other conditions encourage such investment.

Potential Solution: Policy statement that such restrictions are transitory.

Article 4: Farming regies autonomes, research and production institutes and stations, commercial companies and other units possessing or administering state owned land cannot lease out their farm land.

Problem: If such entities are having trouble administering their lands, it would be economically preferable for them to get management help from sharecropping or other lease arrangements. Prohibiting such arrangements can inhibit improvements in productivity.

Potential Solution: Distinguish between leasing and renting, with renting referring to use contracts of less than 5 years, and allow renting.

Article 18 says that civil servants and employees of entities which manage state owned agricultural land cannot lease-in agricultural land.

Problem: Such a prohibition can deprive the sector of management abilities, although during the transition phase, it may be advisable to avoid the undesirable exercise of influence of such people.

Potential Solution: Policy statement that such a prohibition is to be in effect for 5 years (or some other transitory period).

--subleases.

Article 22 says that any sub-lease document is null and void.

Problem: Prohibiting sub-leasing may have negative effects, such as inhibiting consolidation and limiting the use of leaseholds for mortgages.

Potential Solution: Policy statement that such a prohibition is to be replaced by the permission of sub leases in accordance with the Civil Code or through a special mention that sub-leases would require the permission of the owner and the holders of mortgages.

--lease period

Article 7 says that lease agreements have to be for a minimum of 5 years, with some exceptions for tree-crop parcels and parcels smaller than 1 hectare whose owner cannot get inputs or operational capital, or who is absent or ill.

Problem: Five years may be too long for people to agree to who are not used to working with one another, and thereby may limit the use of leases. It is not clear why the state should specify a minimum period, rather than leaving such a question to the parties to the lease.

Potential Solution: Since there are already substantial exceptions to this clause, eliminate it altogether.

--right of lessees to purchase leased land

Article 9 states that the lessees have the right to purchase the land should the owner wish to sell, ahead of any other buyer other than a co-owner or neighboring owner.

Problem: This provision may inhibit the leasing of land, since owners may want the flexibility to sell at the best possible price, and since potential buyers will not be interested in land which is being leased. This clause is also included in the draft law for the Agency for Rural Development and Planning.

Potential Solution: In the implementation of the law for the ARDP, let the price offered be the determining factor of whether a sale occurs, and only use the "priority classes" of buyers when buyers of different priority offer the same price.

Article 25 says that a person who is a stockholder in a company through Art. 36 of Law 18/1991 can lease land from that company for a minimum period and then will automatically become the owner of that land or its equivalent.

Problem: This procedure will probably lead to the breakup of the state farms sporadically, which could eliminate workers and other landless from access to such lands. Another potential complication is the procedure for the direct restitution of land to former owners as specified in the law for the Agency for Rural Development and Planning, rather than going through the leasing phase. The laws appear to be in contradiction on this point.

Potential Solution: Since the leasing by stockholders does not appear to be mandatory, define leasing as a use contract longer than 5 years, and then only rent for periods of less than that period. Let the land commissions handle the restitution question as determined by other legislation.

--tax obligation

Article 10 says that the owner (or holder of usufruct title) is liable for the payment of any

land taxes.

Potential Problem: This provision may not be in agreement with the plans of the Ministry of Finance, which in other countries has preferred that the "beneficial user" of the land pay the tax, and not necessarily the owner.

Potential Solution: Consult with Ministry of Finance.

--rent amount

For the most part the law leaves the amount of rent and the form of payment (in kind or in cash) to be defined in the contract. However, Article 16 says that the rent to be paid in money will consist of the Lei equivalent of a particular product or products.

Problem: Introduces complexity into the lease contract, for defining the rent to be paid, which normally would be the responsibilities of the parties to the contract. It is not clear what benefits such a clause produces.

Potential Solution: Article 16 wording does not appear to mandate the use of the product value procedure rather than simple cash rent. If such is the case, in the implementation orders let people write their own contracts.

--what happens upon the death or disabling of either party

Problem: The law does not specify what happens in these cases.

Potential Solution: Check to see if the Civil Code covers such cases. If not, either amend the law to include such a clause, or produce and publicize a model lease with such a clause, and advise notaries and others involved in advising those who lease agricultural land about its desirability.

## 3. A LAND MARKET INSTITUTIONAL DEVELOPMENT STRATEGY

There are at least 14 immovable property market legal segments, each with different rules for access to properties and for the transfer of their ownership and use (See "Study..." for a discussion of these segments). Creating, encouraging and coordinating these various segments of immovable property markets is an important although admittedly complex task. The success of national and regional economic development policies rely on responsive property markets.

Problem: The creation of a coherent set of land market institutions requires careful coordination of laws, governmental policies and investment of resources. The development of a legal framework for these different immovable property market segments of necessity has been more responsive to immediate crises than to a carefully crafted legislative program, thereby producing a certain degree of implementation inefficiency and legal confusion. Different donors in support of the transition may suggest different approaches, institutional arrangements and legal concepts often incompatible with existing ones. Different Ministries embark on programs which affect immovable property markets and which may not be compatible with initiatives with other Ministries, or may duplicate those initiatives leading to a sub-optimal use of resources.

Potential Solution: To complete the creation of coherent immovable property markets, Romania might consider what has been done in Albania, namely the creation of a Immovable Property Market Coordinative Working Group with representatives of the Ministries and Agencies most

directly responsible for privatization programs' implementation and the administration of laws which impact on immovable property markets.

The primary task of this Working Group would be the drafting of an Action Plan for the Institutionalization of Immovable Property Markets, whose objectives would be defined according to national priorities. The Action Plan would outline the steps to be taken over a 4-5 year period to achieve those objectives, as well as a transition Action Plan Coordination Unit to implement the plan, channeling all resources provided for the establishment of immovable property market institutions toward the achievement of those objectives.

Some of the issues which could be addressed in the Action Plan under the coordination of the Working Group, include the preparation of coherent legislation, the development of procedures for clarifying and validating the private and public ownership rights to immovable properties which result from the privatization programs, and the identification of specific public policies which can (1) improve the dynamism of immovable property markets, (2) assure widespread access to these markets, and (3) guide these markets so that the country's natural resource base is improved (see Section 9 of the "Study..." for a more detailed discussion of the possible components of this Action Plan).

## 4. THE PROPOSED GENERAL CADASTRE AND LAND REGISTRATION PROJECT

The creation of a modern immovable property registration system is clearly an essential element in a market oriented economy (as discussed in "Study...", Section 9). The form of that system and the procedures to create it have been extensively considered by many Romanian and foreign specialists. Based on experiences in other countries, there are two strategic questions which should be addressed before the final approval of the badly needed Law Regarding Genal Cadastre and Land Registration:

1) Are people satisfied that there is adequate integration of the property mapping and legal registration components of the new system? This question is important for two reasons:

-- Romania's decision to adopt what is basically the traditional Central European model for immovable property registration (see Bose, 1995 for more on this model) should be informed of the problems of that institutionally bifurcated system which have been the cause of much distress and expenditure of funds in recent years in several European countries. For example, Austria has been investing several million dollars for the past 8 years in unifying the cadastral mapping institution with the land registration offices. Switzerland is investing $1.3 billion dollars in the modernization of its immovable property registration system, much of which is being devoted to correcting the problems which derive from there being two separate institutions. Hungary opted two decades ago to unify the cadastral mapping and registration offices. Romanian's should be sure that opting for the traditional model is the best long run decision, and should not adopt a system with demonstrated problems as the best system for Romania.

-- Creating the information base for the new registration system, i.e., first registration of privately and publicly owned properties, will necessitate the launching of numerous field teams through the ONGCC and the OGCJ's, but as presently designed these teams would focus primarily on the surveying and mapping of parcel boundaries. The parallel effort of locating and recording of documented rights to privatized properties is apparently proceeding independently through the Ministry of Justice.

It may be more cost effective for the field teams to validate both boundaries and documented information about rights to immovable properties, creating simultaneously the property maps and the land book. It may also be helpful for there to be a procedure

for community examination of the results of this field work, the identification and correction of errors, and then the issuance of new ownership certificates for each property. These certificates would signify the final stage in the privatization process, and would certify the nature of ownership and other rights to each property, geographically locating each property by referencing the comprehensive parcel maps through the use of the cadastral number.

2) Is it the duty of the State to finance highly precise and monumented parcel surveys?

The draft law wisely does not specify the technical requirements of parcel maps for the registration system. However, there should be some discussion of these requirements to be sure that the mapping effort proceeds as rapidly as possible. Under Romanian conditions, it may be financially justifiable for the State to make investments in highly precise and monumented parcel surveys. On the other hand, who would benefit from these investments? For the majority of newly created properties, it is highly likely that neighbors have no doubts as to where the un-monumented boundaries are and there are relatively few boundary conflicts. Moreover, for a large number of parcels, the cost of precise and monumented boundaries will approach the value of the properties. In the interest of a speedy registration, it may be better to focus on the registration of rights, with the minimum expenditure possible on the rapid production of parcel maps.

In regard to parcel mapping, it may be advisable for the State to produce property maps which are indicative of the locations of boundaries, with precision derived from the scale of the maps. For those owners whose properties have a high value, or when there is some private conflict among neighbors, the owners themselves would assume the costs of precise and monumented surveys.

There are also some points in the draft law (Chamber of Deputies version of 26.06.95) which are unclear:

1) Article 1, the definition of "immovable property" in the English translation seems strange, i.e., "the parcel with or without buildings on it". What about apartments? Would they be included in this definition? Clearly they should, as implied in Article 48 of the 26 June, 1995 version. Also the definition of "parcel" as "a land area accurately determined, which has a single category of use, identified by a cadastral number, having one or several owners" is problematic. The "category of use" concept is of little relevance to the definition of a parcel for a registration system. Rather the definition should be something like "a bounded area of land with a homogeneous ownership". A piece of land which is owned by two people, where part is used for housing and part for crops would be a single registered parcel, not two.

2) Article 2, item d) and other references in the law to integrate property taxation in the cadastral-registration information system. This will produce a public resistance to the creation of the registration system. Gathering information for tax purposes should be considered as a specialized cadaster and as a separate activity which is done after the registration system is functioning.

3) Article 49 establishes a special cadastral register for publicly owned immovable properties in the private domain. It is not clear if such properties are to be included in the normal registration system, with an land book entry for each. If not, why not? Presumably the property maps will be comprehensive, with property numbers for every parcel, so it seems that the registration information should be likewise comprehensive. Especially if there are different public agencies which will exercise control over the use and disposition of public properties.

4) Chapter II states the required procedures for first registration, which places a great burden on the land book judge. The law might well include the authorization of the land book judge to

nominate assistants to carry out the first registration procedures for the huge number of properties which must be registered as quickly as possible over the next few years.

5) Article 67 which deals with sanctions specifies the fines in lei for different infractions. Since inflation makes it necessary to change fines easily without having to amend the law, a more flexible method is needed for modifying fines.