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Land Market Development in Rural Romania

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EXECUTIVE SUMMARY

Markets for both sale and lease of agricultural land are now emerging in many areas of Romania. Private land owners have received land in kind from former agricultural production cooperatives (CAPs) and are now able to freely conduct sale and leasing transactions under legal provisions adopted in 1998. These emerging markets are accompanied by certain important characteristics and constraints, summarized as follows:

The sale market for agricultural land is developing, with some 14,000 sale transactions through March 1999. Officially reported average prices have been the equivalent of \$353/hectare, but understatement could make actual prices higher by 50% or more, perhaps \$530/hectare. Price differences from developed land markets are large, but are less than initially appears when “purchasing power parity” is considered.

- The lease market for agricultural land is significantly developed, both in leases to private farmers and to “legal associations” (the smaller, “family associations” generally involve temporary use rights rather than lease arrangements.) Lease payments are typically equal to 20-30% of the gross crop produced, and are high enough relative to sale prices to make leasing rather than sale an attractive option.
- Procedures and fees for land transactions are generally satisfactory. Two transaction problems, however, are extremely high notary fees and lack of adequate information as to potential buyers/sellers, lessors/lessees.
- A land tax is expected to be introduced and should be both simple and initially of a very low level if it is not to burden the rural poor or prove unadministrable.
- There is essentially no mortgage lending on agricultural land, although this is permitted by law. Current purchases of such land thus generally require cash payment by the buyer without any bank financing (no “purchase money mortgage”). The availability of such financing could greatly contribute to land-market activity, and there are measures (including some adjustment of existing law) that could encourage banks to begin mortgage lending in the rural sector.
- Various measures could be taken to enhance dispute resolution and generally increase the ability to rely on legal rules.
- Restitution of state farm (IAS) land is in prospect, and is expected by the rural population to include share-holders whether they are locators (i.e., opted for a five-year lease under the 1994 Lease Law) or not. There is a widespread desire for rapid restitution starting this autumn and for allocation of contiguous parcels as distinct from the fragmented parcels typically allocated under the earlier restitution of CAP land. Allocation of non-land assets used by the IASs is also an important issue requiring legislative clarification.

We make a number of recommendations, coordinate with our observations, of which the two most important for the enhancement of land-market activity (leaving aside the IAS-related issues, which are not central to the present inquiry) are probably the reduction of notarial charges and the measures to facilitate mortgage lending by banks.

INTRODUCTION

Land markets, including purchase, lease and other transactions with land, have been vital to the successful development of all the advanced market economies. For the rural sector, the ability to readily sell and lease agricultural land has been essential to the increase of agricultural efficiency. Through such transactions, more efficient, energetic and motivated farmers buy or lease land from those who are less so, and landowners who may wish to exit farming and require additional income (such as pensioners) or who need investable capital (such as younger persons with business opportunities), have an asset whose value can be reliably realized. Over time, land markets, and land markets alone, should determine the most efficient size of farming operations in different regions of the country. Land with a reasonably predictable market value is also essential to emergence of a modern rural credit system in which agricultural land can be mortgaged as security for bank loans.

Markets for both sale and lease of agricultural land are now emerging in many areas of Romania. The restitution of land from CAPs in Romania is, of course, substantially completed. The private owners of this land have been able to freely conduct sale and leasing transactions through the changes made in Law No. 18 "On Land Resources" and the law "On Leasing", both as republished in 1998, and the 1998 law "On the Legal Circulation of Land". These emerging markets are accompanied by certain important characteristics and constraints, which we have identified through a process of interviewing farmers, pensioners, enterprise managers, local officials, and others, involved in land-market operations.

The present report is based on fieldwork conducted by RDI attorneys in seven *judets* in Romania in the spring and summer of 1999.¹ Initial fieldwork, conducted in the Brasov and Bucharest *judets*, was conducted to determine issues in rural land regulations and markets that could affect Romania's accession into the EU. This report focuses in greater detail on agricultural land transactions, the subject of our second round of fieldwork that took place in July.

Romanian law supports sale and lease of agricultural land among citizens,² as well as supporting inheritance and mortgage of such land. Legislative reforms of the past two years have clearly facilitated the agricultural land market, and it is a fact of great significance that not only lease but also sale transactions are now occurring to various degrees throughout Romania. This report will begin in Section II with an overview of the legal framework for agricultural

¹ Brasov, Bucharest, Constanta, Galati, Tulcea, Vaslui, Vrancea.

² Romanian law restricts foreign acquisition of agricultural land through either purchase or lease. The Constitution explicitly prohibits foreigners and stateless persons from acquiring ownership rights to land. This prohibition is also reflected in the law "On the Legal Circulation of Land." This law also says that foreign legal entities may not acquire land by way of a transaction with a person, but then goes on to say that foreign rights to land that is the subject of foreign investment shall be governed by foreign investment legislation. The foreign investment legislation states that partly or fully foreign owned companies with Romanian legal entity status may acquire ownership to land in order to carry out their activities, but that the land must be disposed of if the Romanian legal entity liquidates. Thus, a foreign legal entity is able to acquire land for its activities through a Romanian legal entity. For a discussion of foreign ownership and lease restrictions in the context of EU accession, see Roy Prosterman & Leonard Rolfes, Review of the Legal Basis for Agricultural Land Markets in Lithuania, Poland and Romania, and Implications for Accession to the EU, Report Presented at the Second World Bank EU Accession Workshop on "Structural Change in the Farming Sectors of Central & Eastern Europe: Lessons and Implications for EU Accession" June 26-29, 1999 Warsaw, Poland)(report on file at the Rural Development Institute).

land transactions, followed in Section III by a discussion of the following issues: (1) sales market development; (2) lease market development; (3) transaction costs; (4) potential effects of a new land tax on market transactions; (5) need for a mortgage market; (6) need for legal aid and contract enforcement; and (7) issues raised by IAS privatization (which may have potentially significant effects on agricultural land markets). Section IV separately reprises our various recommendations for removing land-market impediments.

OVERVIEW OF THE LEGAL FRAMEWORK FOR RURAL LAND MARKETS

The 1991 law “On Land Resources” (republished in 1998) established the basis for a land market by facilitating the privatization of the vast majority of land used by the agricultural production cooperatives (CAPs), primarily by restitution to prior owners or their heirs.³ The vast majority of the 10.5 million hectares currently in private ownership (out of Romania’s 14.7 million hectare agricultural land base) was privatized through the restitution process, and roughly four million people have received land through this process.⁴ The titling and registration process has been completed for between 80 and 90 percent of this restituted land, with some disputes (often between competing heirs) still needing resolution on a portion of the remaining, untitled land.

The main legislative act addressing agricultural land transactions is the 1998 law “On the Legal Circulation of Land.” This law provides that Romanian citizens can acquire and dispose of *extra-vilan* agricultural land (land not in towns) in conjunction with the norms of civil law. Purchase-and-sale, gift and inheritance transactions are thus sanctioned. Discussions with both policy makers and farmers indicated that no further legal measures, such as implementing regulations or model contracts, were needed for such transactions to be carried out between Romanian citizens.

The rights of Romanian citizens to acquire and dispose of land, however, are limited in two ways. First, a family may own no more than 200 hectares of arable land. This limit is not at present or for the foreseeable future a significant land market impediment, especially since the average private farm in Romania owns 2.33 hectares of land.⁵ Additionally, the 200-hectare restriction may help to prevent formation of *latifundia* (extremely large private landholdings cultivated by hired laborers). Second, co-owners, neighbors, or lessees of *extra-vilan* agricultural land have a pre-emptive right to buy such land if it is offered for sale. The law “On the Legal Circulation of Land” clarified and narrowed the preemption rules. The owner of land offered for sale must notify the local administration, which publicizes the offer to sell for 45 days. Within this time period the pre-emptive rightholders have the opportunity to make an offer to buy the land. The seller must accept the offer only if the price is satisfactory. If it is not, the seller may sell the land to anyone (presumably this must be for a higher price than any offered by the co-owner, neighbor or lessee). While pre-emptive rights extend the time for concluding sale transactions, they are not a significant impediment to land markets in the Romanian context. A number of the farmers interviewed over both rounds of fieldwork stated that they had bought land, and that the 45-day waiting period was not a significant obstacle to the transaction; no one interviewed stated that the present narrow preemption right or 45-day waiting period poses a problem.

³ Land used by agricultural production cooperatives that was not restituted was transferred to the management of local authorities. This land apparently is largely pasture land, and is used in common by rural residents. The failure to privatize this land will probably not have a major impact on the development of the land market, and in any event would probably be strongly resisted.

⁴ Nicolae Baciu & Simona Bara, Romania: Land Law -Lessons and Implications 3, 7 (Paper prepared for the World Bank Workshop on “Structural Change in the Farming Sectors of Central and Eastern Europe,” June 26-29, 1999, Warsaw, Poland) (report on file at the Rural Development Institute).

⁵ *Id.* at 7.

The law "On Lease" (republished in 1998) allows Romanian citizens and legal entities to freely conclude lease contracts for agricultural land and to agree on the terms, most notably the duration of the lease and the amount of rent that the lessee shall pay. The law also adequately outlines the required contents of a lease, such as that the lease be in writing, contain the names and addresses of the lessor and lessee, describe the real estate being leased, state the lease duration, and include other responsibilities of the parties as they agree.

The changes made in the legal framework in 1998 have been crucial to rural land-market development, especially for land sales.⁶ We note that most of these crucial changes were ones contained in the "land market" portion of the World Bank's ASAL agricultural policy matrix.

⁶ "In Romania, starting in April, 1998—after the adoption of the Law No. 54/1998 [Law on Land Circulation]—we could discuss about an active formal land market [for *extra-vilan* land]." Baciu & Bara, *supra* note 4, at 6. Our own field findings are quite consistent with their statement.

CURRENT STATUS OF THE RURAL LAND MARKET AND RECOMMENDATIONS FOR REMOVING IMPEDIMENTS

Sales

1. Official data

The market for sale of agricultural land, though not yet as developed as the lease market, is growing in many parts of the country, and seems likely to be larger than central statistics reflect. Land prices vary widely according to location and crop. For arable land, as reported in farmer interviews, actual prices range from 2 to 12 million lei per hectare (and in some cases even higher). The average declared price on all extra-vilan land sales, cumulatively, was 5.3 million lei (\$353) per hectare as of March 1999.⁷ We believe this price significantly understates current average prices, for two reasons. First, it is a cumulative average, and more recent prices are very likely higher. Second, the “declared” prices which make up these official statistics are, as sales participants consistently acknowledged in our interviews, substantially less than the actual prices paid. This is largely because the very high notarial fees are based on the declared sale price.⁸ Thus we would not be surprised if actual average prices (which include vineyard and orchard as well as arable land) are 50 percent or more greater than the official figure of 5.3 million lei per hectare (that would bring them to 7.95 million lei per hectare, or the equivalent of \$530).

An average price equal to the higher figure of \$530 per hectare, however, is still quite low in relation to Western Europe. EU figures for 1997 show the following average per-hectare prices:⁹

Table 1: Agricultural Land Prices in EU Countries

Country	Land price per hectare (\$)
Western region of Germany (agricultural land)	14,398
All-Germany average (agricultural land)	8,668
Italy (agricultural land)	9,592
Denmark (agricultural land)	7,514
Greece (non-irrigated land)	4,260
Spain (non-irrigated land)	2,982
Ireland (agricultural land)	5,633
France (arable land)	2,803
Finland (agricultural land)	2,477

⁷ Dana Dobrescu, *The Land Market and Other Related Issues Regarding Land Privatization in Romania*, Annex 2 (World Bank Consultant Report, Bucharest: June 3, 1999); Baciu & Bara, *supra* note 4, at 6.

⁸ For further discussion, see section on “Transaction Costs” below.

⁹ Data reported by the EU at <http://europa.eu.int/comm/dg06/agrista/table_en/338.pdf> (last visited in August, 1999).

Separately, and consistent with the two German figures shown in the table, the average price in the eastern region of Germany has been estimated at \$4,000-\$5,000 per hectare.¹⁰ If the average per-hectare price in Romania is \$530, it also is still low in relation to such countries as Poland (e.g., \$800 to \$1800/ ha).¹¹

One factor that should, however, be taken into account when comparing land prices in Romania with land prices in Western Europe is purchasing power parity (PPP), which would increase the relative value of all prices expressed in local currency (including agricultural land prices) in all Central and Eastern European countries.¹² In 1997, PPP in Romania was 0.33¹³ (an amount of lei equal to \$0.33 spent in Romania would buy the equivalent of \$1.00 worth of goods in the United States). This is sometimes expressed by saying that the PPP ratio of the lei to the U.S. dollar is approximately 3:1.¹⁴ To give an idea of the relative price of agricultural land, if two pensioners with a combined monthly pension of 200,000 lei (\$14) could sell two hectares of land at 7.95 million lei (\$530) per hectare for a total of 15.9 million lei (\$1,060), they would receive an amount equal to more than six years of pension income.¹⁵ If they started with 2.5 hectares, this household could continue to farm 0.5 hectares for household consumption. In PPP terms, a price of 7.95 million lei is equivalent not to \$530 per hectare, but to \$1,590 per hectare.

Official data on sales may not capture the true level of market activity in extra-vilan land for two reasons: informal sales and high notary fees. First, some sales and exchanges are occurring outside the formal system. Participants in an exchange do not transfer titles, but agree to switch plots for long-term use in order to further consolidate their current holdings or to be nearer to other family members' holdings. Participants are often related. In other cases, actual sales occur outside the system. One official in Vrancea told us the number of informal sales was small but increasing. The most probable cause for an informal sales market is avoidance of high notary fees. High notary fees, taken as a percentage of the selling price, have also encouraged under-reporting of actual sales prices by the buyer and seller. Official data may therefore both under-report the number of market transactions and discount the market price by as much as 50 percent. (Further discussion at Table 1, above, and under Section 3, below.)

According to Ministry of Agriculture statistics, the volume, total hectares, and prices of extra-vilan land sold increased between November 1998 and March 1999, as shown in Table 2.

¹⁰ See Prosterman & Rolfes, *supra* note 2, at 17.

¹¹ *Id.*

¹² PPP currency values reflect the number of units of a country's currency required to buy the same quantity of comparable goods and services in the local market as one U.S. dollar would buy (when the common unit of expression is the U.S. dollar) in the United States. *World Resources 1996-1997*, at <http://www.igc.org/wri/wr-96-97/ei_b2.html>.

¹³ The World Bank, *Income Distribution and PPP Estimates of GNP*, at <<http://www.worldbank.org/np/worldbank/table/income.html>>.

¹⁴ PPP comparisons between the lei and Western European currencies would generally give ratios at least this high.

¹⁵ 200,000 lei (their combined monthly pension—a fairly typical rural average) X 12 months = 2.4 million lei per year. That figure X 6 years = 14.4 million lei. If we use the official average figure of 5.3 million lei per hectare, the total price of 10.6 million lei would equal more than four years of pension.

Table 2: Cumulative figures for extra-vilan land sales as of November 1998 and March 1999

	As of November 24, 1998	As of March 29, 1999	Percent change
No. of sales/purchase contracts	6,047	14,335	137
No. of separate parcels sold	9,890	20,362	106
Surface area sold (ha)	11,517	18,408	60
Land selling price (million lei/ha)	4.34	5.30	22 ¹⁶

Source: MoAF, 1998, 1999.¹⁷

The cumulative area of 18,408 hectares still constitutes less than one-fifth of one percent of the approximately 10.5 million hectares of privatized agricultural land in Romania,¹⁸ but it represents a significant start-up of sales activity in the agricultural land market. It offers, for example, a fairly good view of what buyers and sellers consider present agricultural land values to be in many, and probably most, areas of the country. And it is sufficient to give assurance that there are no unforeseen hitches in the legal rules or procedures relating to land sales. It may well be true that the first 14,000 sales have been the hardest, and the most important.

2. Regional variations

Transaction volumes and prices vary by region.¹⁹ Anecdotally, the local administrative district of Prejmer (which is located near the city of Brasov in Transylvania) has 2,700 hectares of agricultural land. Prejmer as of March 1999 had 45 land sales, most of which were for agricultural land, through which 80-90 hectares of land had been sold. This represented a not-insignificant turnover ratio of about 3 percent, and had mostly occurred in the preceding 12 months. The sales prices were 5-6 million lei/hectare (\$333-400/hectare). Many farmers we interviewed indicated that they had purchased land. Prejmer consists of a very small area, and

¹⁶ Taking into account an inflation rate of 14.5 percent in Romania between December 1, 1998 and the end of March, 1999, the net increase in land prices in real terms was 7.5 percent. *The Economist Intelligence Unit Limited*, Country Report 27 (April 28, 1999) (reporting monthly increases in consumer prices in Romania for 1998 and 1999).

¹⁷ As cited in Baciu & Bara, *supra* note 4, at Table 1.

¹⁸ The annual turnover rate for all land (including both agricultural and urban land) in Hungary is estimated at 2.5% of all titles, while the estimate for other Eastern European countries including the Czech Republic, Latvia, Poland, the Slovak Republic and Slovenia is very roughly 1% of all titles. The EU norm is estimated at 7% of all titles. The authors note, however, that rural land market activity in all of the six Central and Eastern European countries they studied is far below urban land market activity. Peter Dale & Richard Baldwin, *Emerging Land Markets in Central and Eastern Europe*, at 15 (Paper prepared for the World Bank Workshop on "Structural Change in the Farming Sectors of Central and Eastern Europe," June 26-29, 1999, Warsaw).

¹⁹ For a further discussion of agricultural land prices found as of April-May 1999, see Dobrescu, *supra* note 7, at 16-17, 24-27; Annex 2. Dobrescu reports differences in prices among regions in Romania. In the plains area (suitable for wheat and corn), agricultural land sells for 1.5 to 6 million lei (\$100--\$400) per hectare. Grass and hay -land in the mountain highlands sells for 2 to 4 million lei (\$133 to \$266) per hectare. In the hilly areas (suitable for potatoes, a higher value crop, as well as for lucerne), agricultural land sells for 6 to 12 million lei (\$400 to \$800) per hectare. Average prices for vineyards are between 15 and 25 million lei (\$1,000 and \$1,666) per hectare, and prices for orchards range from 15 to 23 million lei (\$1,000 and \$1,533) per hectare.

is rather atypical for a variety of reasons (agronomically, geographically, culturally, etc.), but it may well represent the direction the land market is moving in substantial areas of the country.

The sales market appears to be less developed in the south and in the east. Of the southern and eastern judets, the sales market may be the most active in Vrancea, where consultants from the Agentia Nationala De Consultanta Agricola (ANCA) reported a total of 600 alienations of extra-vilan land (including both arable and non-arable land). The average price was 6.3 million lei (\$420)/ha. The most active market in the south may be in vineyards, which sell in 0.5 to 1-hectare parcels for an average of 10 to 20 million lei (\$667--\$1333) per hectare.

In Tulcea, Galati and Vaslui judets (located in the south and east), the sales market has been slower to take hold. According to interviews with officials and farmers, very few sales (representing in total only 10-20 hectares in each of these judets) have been registered. Many of these transactions have occurred between relatives. (One interesting note, and the only example of such a transaction we discovered on our fieldwork, was a report of the sale of 4.3 hectares of arable land in Galati for a total of 100 million lei (23 million lei per hectare, or about \$1,533) to an Italian rose company. (Presumably the sale took place to a Romanian legal entity associated with or controlled by the Italian company.))

Several farmers throughout this region expressed an interest in buying land in the future; few (except for residents of Duravatsu county in Tulcea²⁰) expressed an interest in selling land. Many land owners, whether young families or pensioners, told us they would “never sell their land.” In one case, a pensioner in Galati sustained two adult children and three grandchildren with his 0.5 ha plot. In other cases, pensioners told us they would like to lease out their land, as they were too old to perform the necessary labor, but didn’t want to sell it because their children might someday want to come home and work it.

3. Market participants

Participants in sales transactions may be only loosely characterized. Buyers, and those interested in buying in the future, are both small farmers and large lessees. Small land-holders, with only 1-2 hectares, appear to play a significant role in the buyers’ market. We spoke with several small farmers in Vrancea judet, for example, who had bought between one and six hectares of arable land (and smaller amounts of vineyard) since 1992, paying between 500,000 and eight million lei (\$67--\$533) per hectare for the arable land. The majority of these sales occurred in the past two years. Sellers are often people who do not live in the comuna where their land is located, and are both active members of the labor force and pensioners. Where the sellers do live in the same commune, they are likely to be pensioners, although many pensioners were adamant about not selling their land (even in areas of marginal productivity). Where resident pensioners are the sellers, they generally sell a majority of their land, but retain

²⁰ Duravatsu village in Tulcea *judet* is an area that was reclaimed from the Danube Delta area during the collective period. The soil is extremely sandy. With irrigation, production of wheat and potatoes is possible. Without irrigation, as has been the case for many years, production is extremely difficult. The village is comprised mostly of pensioners, as most young people have left for the towns or to fish in other areas of the Delta. Pensions ranged from 50,000 to 250,000 lei per month, although no one had received them for several months. Almost all of the residents of Duravatsu wanted to sell their land, and were quite disappointed we were not interested in buying.

the remainder for self-cultivation, apparently for purposes of food security. Non-resident sellers, whether or not pensioners, seem likely to sell all their land.

4. Market impediments

Farmers in various parts of the country cited several factors in their reluctance to buy land, including a shortage of labor,²¹ lack of access to capital (machinery),²² high costs of production coupled with low crop prices,²³ difficulty in finding good land to buy that was near to their current holdings, and, most of all, a lack of available cash (this last, of course, underlines the potential importance of purchase money mortgage, discussed below). In Constanta judet, ANCA officials noted that a high level of disputes over restitution claims--and the resultant high number of holdings whose ownership is unresolved --may also contribute to low frequency of agricultural land sales.²⁴ In other regions, disputes between heirs to restitution holdings may still stall the process of establishing title to some holdings, and so impede possible sales.

One reason for farmers' reluctance to sell land may be the possibility of receiving relatively high lease payments. The annual lease payment in Romania appears generally to be between 12 and 40 percent of gross production (rates of 25 percent are common). Given an average yield of 2.5 tons per hectare and an average wheat price of about 900,000 lei per ton, the average value of gross production on one hectare is about 2.25 million lei, or \$150. If the average sales price of land is 7.95 million lei, or \$530, per hectare, the lease to sales-value ratio is 28 percent. In other words, in just three-and-a-half years a landowner could make as much money from leasing out his or her land as she could have made by selling it.²⁵ If we use the average of declared sale prices—the basis for the official average figure of 5.3 million lei, equivalent to \$353 per hectare—the lease to sales-value rate is 42 percent, meaning that lease payments would, on average, equal sales price in about two-and-a-half-years.

²¹ Several family farmers told us they would not be able to put additional land to good use given their current household labor capacity, and so would not be interested in buying more land.

²² Access to tractors, combines and other mechanized equipment is very limited for small farmers. High and unpredictable interest and exchange rates have compounded this problem, making it undesirable to buy equipment on credit. Credit is further limited by the lack of acceptable collateral available in rural Romania, as discussed in more detail below. Few people use manual labor for cultivation and harvest, instead renting in services at a high rate (see next note on high cost of production inputs).

²³ One farmer in Constanta *judet* reported average production costs for wheat at 3 million lei (\$200) per hectare, and an average income of 2 million lei (\$133) per hectare (based on yield of 2 tons at 1 million lei per ton). Other farmers reported average annual machinery rental costs at 1 to 1.5 million lei (\$67-\$100) per hectare, and harvesting costs at 600,000-700,000 lei (\$40 to \$47) per hectare. Fuel is also an expensive input, at 3,500 lei (\$0.23) per liter. Prices Romanian farmers realize for their production are low because prices on the world market (especially for grains) have fallen, and because state-run monopolies continue to exert significant power. The state-owned wine processing enterprise, for example, holds a corner market on grape-buying. In the lack of any competition, grape prices to farmers remain low.

²⁴ The number of disputed claims in Constanta may be relatively high due to the fact that the area of land claimed in restitution was about 125% of the total area available for restitution, causing claimants' holdings to be reduced by a uniform percentage.

²⁵ Our comparison also rests on the assumption that few possibilities currently exist for rural land sellers to earn a substantial return on investing the money they would earn from the sale.

Recommendations:²⁶

- Encourage the use of purchase money mortgage to finance new land sales (see below). It should be kept in mind that virtually all agricultural land sales currently are for 100 percent buyer's cash, with no financing.
- Establish channels for efficient dispute resolution of remaining restitution claims, often involving multiple claimants such as heirs. One way to do this would be to increase the capacity of the existing court system of general jurisdiction. Another possibility would be to establish special land courts, either with jurisdiction over one or several types of land disputes, or with broad jurisdiction over nearly all land disputes. Establishing "circuit rider" courts (where one to three judges travel throughout a broad jurisdiction, sitting "in court" in selected central points within their jurisdiction on pre-specified days each month) could be another way to reach rural regions of the country where disputes may still hamper land market development. Finally, an alternative, more efficient method of dispute resolution, such as arbitration, could be developed to address land disputes.
- Consider establishing auctions for land in rural areas.²⁷ These could be tried through pilot projects in areas where agricultural land markets are clearly taking hold.
- Establish land market information/ brokerage services for rural areas (see section on "Transaction Costs" below).

Lease

The lease market for agricultural land is significantly developed in Romania, and appears to have grown stronger in the past two years.²⁸ Lease agreements, whether written or unwritten, involve rent levels equivalent to anywhere from 12 to 40 percent of the crop produced, with the most common rent levels appearing to fall in the range of 20 to 30 percent of the gross crop produced (whether stated directly as a percentage of gross production or as a higher percentage of net income which turns out to be equivalent). Such rent levels are not unreasonably low when judged by international comparisons. A fairly typical lease payment for agricultural land

²⁶ We have confined our recommendations to those that are legal in nature and bear on land-market development. Thus, we have not detailed other recommendations that could also assist in land market development. (Such recommendations could include: increasing access to machinery through credit, perhaps by offering subsidized interest rates; increasing access to machinery through providing technical assistance to small farmers interested in sharing ownership of machinery through service cooperatives or directly; and ensuring timely distribution of state "input" vouchers.)

²⁷ Saratov *Oblast* in Russia has successfully implemented auction procedures for both urban and rural land. Although most of the land marketed through the auctions is owned by the state or municipalities, the procedures could be adapted to apply to secondary sales (the great bulk of those in Romania).

²⁸ It is difficult to pinpoint relative increases in the number of lease transactions, total area leased, number of lessees, and prices paid to lessors, as many if not most leases are informal. Farmers and officials did tell us, however, that lease payments as a percentage of production had gradually increased over the past few years. A substantial number of the lessees we interviewed, whether large association leaders or small-holders, had leased in land for the first time in recent years or had increased the area leased in. (The exceptions are the large legal associations derived from former collectives, which have had about the same number of leased-in holdings all along.)

in developed market economies is equivalent to around 25 percent of gross production.²⁹ All necessary forms for written leases seem to be available. Terms range from one to five years. Informal leases, especially between relatives, were often for an indefinite time period. The level of income from a typical lease for 2.5 hectares is equal to about 1.4 million lei (\$93), or a nearly 60 percent increase in a typical pensioner household's income of 2.4 million lei (\$160).³⁰ Most lease arrangements appear to be made with legal associations, although some leasing in by small-scale farms has also occurred.³¹

Lessors to legal associations and to private individuals share similar characteristics: they are often non-residents (whether or not pensioners) or else resident pensioners. Many live in cities, including Bucharest. One lessee in Vrancea *judet* commented that it was easier to lease from non-residents because the probability for disputes was lower. Resident lessors often hold back at least 0.5 hectares of land to farm personally for household consumption.

Legal Associations

Legal associations vary in size, degree of formality, and lease terms. Legal associations typically lease in between 20 and 800 hectares representing land from up to 600 lessors. Few lessors also provide labor on legal associations. Labor is generally contracted out to a much smaller group of permanent and seasonal workers who are paid on salary. Most large legal associations have machinery. We found that written leases exist in about half of the legal associations that we encountered. In some associations, written leases exist for some lessors and not for others who usually are family or friends of the individual who founded and runs the association.

Lease terms ranged from 12 percent to 40 percent of the gross production, depending in part on whether lessors retained the right to individually produce corn on a small parcel (typically 0.5 hectares) of association land, and whether lessors contributed any production costs. Lessors who do choose to farm a small parcel in corn (where they have this choice) provide labor for weeding and keep all production from the parcel. The association plows, discs, seeds and harvests the corn. Where a lessor elects to retain a parcel of his or her land share in corn, the association reduces lease payments for the remainder of this person's land, considering assistance with corn production to compensate for losses in rent. In many cases, legal associations paid up to 30% of the net production (of wheat and sunflower) to lessors who did not contribute costs and up to 50% to lessors who did contribute costs. Net production is

²⁹ Higher payments stated in terms of gross production are often found to involve lessor provision of significant production inputs other than land, so that the actual net return to the lessor is equivalent to a significantly lower proportion of gross production than what is normally stated.

³⁰ Average annual pensioners' household income = (100,000 lei/pensioner)(2 pensioners)(12 months) = 2.4 million lei. Average annual lease payment from 2.5 hectares = (2.5 ha)(2.5 tons of wheat/ha)(900,000 lei/ton)(.25 gross production) = 1.4 million lei.

³¹ Farming and land sharing arrangements in Romania may take a number of forms, including individual family farms, family associations, and legal associations. Individual family farms are small-scale farms, averaging 2.3-2.5 hectares each. Family associations are groups of individual family farms, averaging somewhat over 100 hectares each. (See note directly below for further discussion of family associations.) Legal associations are formally-registered agricultural enterprises, averaging 400-500 hectares each. Of the total agricultural land area occupied by these three types of entity (state farms and some minor categories are not included in this calculation), 79% (9.2 million hectares) is in peasant farms, 8% (0.95 million hectares) in family associations, and 13% (1.56 million hectares) in legal associations. Baciu and Bara, *supra* note 4, at 7.

between 30-40% of gross according to most associations, yielding a total payment equivalent to 15-20% of gross in both cases. One large legal association established a minimum guaranteed payment of 500 kg. wheat/ha and 1,000 kg. corn/ha; lessors received either these amounts or 75% of the net production, whichever is higher. Payments can be either in-kind, in cash, or mixed. Most leases are from one to five years; leases for vineyards are usually at least three years because of the high level of up-front costs required to bring the land and vines up to production capacity.

Larger legal associations appear in many cases to be slightly varied versions of former collective farms. Farmers often described leasing to legal associations as a decent option only for non-residents, and for pensioners who had no access to household labor. Farmers also cited the high cost of machinery as a factor “forcing” people to lease to legal associations. Some farmers wanted nothing to do with legal associations: one group of farmers in Vrancea *judet* referred to them as “elder sisters of the old collectives,” and in Galati *judet*, one farmer explained there were no legal associations in his village because “nobody wanted them,” while another farmer said simply “we are sick of associations.” In light of these findings, we were concerned to find several ANCA officials to be very supportive of the legal associations, seeming to encourage their development over the development of small farms or family associations.

Some legal associations, however, are not derivatives of old collectives, but have been formed by new entrepreneurs. One of the barriers to establishing new legal associations is finding an adequate number of willing lessors with contiguous, or largely contiguous, land holdings. Fragmentation of holdings makes this difficult, as does the lack of information available to potential lessors and lessees. We encountered two instances where people surmounted these obstacles through special access to, or gathering of, information. In the first, the lessee happened to be the mayor, who held all of the land ownership records. He leased in 200 hectares from about 100 people. He assisted some of these lessors to exchange their parcels with others in the *commune* through “mutual agreement” so that all parcels within the 200 hectares would be contiguous. In another instance, a lessor in Vrancea with 600 total hectares (400 leased from a former state farm, or IAS, and 200 leased from private individuals) “found” his 60 lessors by word of mouth and posting a notice up in the cantina that he operates. He also helped some of the lessors to organize informal exchanges in order to arrive at a single, contiguous area. See discussion below under “Transaction Costs” for further consideration of information issues.

Individual Lessees

Individual small-farmer lessees generally have total holdings (owned and leased in) of 10 hectares or less. Lease agreements are often informal. In two cases we encountered, small-farmer lessees had recently adopted written lease contracts in order to “fulfil requirements for credit” for new machinery. Payments by individual lessees are generally in the same range as those of legal associations, although in some cases appear higher (we heard of several cases where a lessor who contributed some of the production expenses received 50% of the gross production). Individual family farms may join together to form a family association; family

associations do not involve leases, however, but rather a temporary contribution of land use rights.³²

Transaction Costs

Two types of transaction costs create impediments to the agricultural land market in Romania: high notary fees and the difficulties of obtaining market information in rural areas. Farmers do not indicate significant difficulties with the technical procedures for sale and lease of land or with the amount of time the registration process takes. Nor, with the exception of high notary fees, they do not indicate significant difficulties with the fees and other expenses that apply to sale of land. Most farmers seem to have a good understanding the transaction and registration process.³³

1. Notary fees

High notary fees, however, create a significant impediment to land transactions. By a great number of accounts from farmers and local officials, notary fees for purchase/ sale transactions of agricultural land are sometimes as high as 30 percent of the land price and quite commonly around 10 to 15 percent. Such fees are extremely high as a percentage of transaction value and in comparison to notarial charges in other countries.³⁴ Many landowners and potential

³² Family associations differ from legal associations in several ways. First, they are usually much smaller. Second, they are generally not based on lease arrangements but rather on the temporary contribution of use rights to their land. There are no written agreements on land contributions. A land owner may withdraw his or her plot from the association at any time to farm individually. Because of the smaller size, the problem of withdrawal from the middle of the field (to the extent that it is sometimes a problem in larger legal associations) is less prevalent. Third, families usually donate a substantial amount of labor to production. In most instances the family association plowed and harvested jointly, and weeded individually. Fourth, families retain a large amount of decision-making authority about what crops to plant on their land each year (within the parameters of a general "crop rotation" pattern). Members receive back an amount of money (or in kind produce) equal to the income from the crops grown on their land minus expenses. Some people told us that family associations are generally composed of local residents who are able to contribute labor, and sometimes pensioners with available household labor. Many family associations do not own any machinery and so must rent it in.

³³ This is true even though the two traditional land registration systems in Romania (the "land book" system and the "inscription-transcription" system) are currently in transition to a uniform "land book" system. The 1996 law "On Cadastre and Real Estate Publicity," the primary legal act dealing with land registration, contemplates use of the land book system throughout Romania, and outlines the procedure for switching over from the inscription-transcription system. Rights under the latter system are protected under this law until each particular jurisdiction is ready to make the change. See Prosterman & Rolfes, *supra* note 2 for further details on land registration in Romania.

During our fieldwork we heard speculation that land records may be taken from courts and given to the notaries in some sort of "privatization" of the registration system. It is extremely rare for registration systems to be privatized (although sometimes a relatively inefficient public system gives rise to parallel and more efficient private ones, as are maintained by title insurance companies in the United States), and it is highly unlikely that such privatization would ultimately be beneficial in Romania.

³⁴ The Parliament of the Republic of Moldova, for example, just passed an "Annex to the Law on Notaries" setting a notary fee schedule for land sales transactions. The maximum fee for the sale of agricultural land is "2.5[monthly] minimum wages" (equal to about \$4.50); the maximum fee for exchanging agricultural land is 0.5 minimum wages (equal to about \$0.90). The new fees are not related to the size or value of the land parcel. See "Maximum Fees for the Preparation of Notarial Acts Concurrently with Civil Legal Acts, the Object of Which is Real Estate," Annex to the Law on Notaries adopted by the Parliament of the Republic of Moldova in August, 1999 (yet to be published). This new fee schedule replaced a schedule in an existing law allowing maximum fees of 2 percent of the value of the land (determined by declared value for sales, but determined by extremely high normative prices for exchanges and inheritance). In Russia, notary fees for land transactions are controlled by the Russian Federation Law "On State Fees". This law establishes two different levels for notary fees on transactions of immovable property: (1) for children, spouses,

purchasers indicated these high fees deterred their interest in transacting. Others chose to avoid notaries by making only informal transactions. Those who did use notaries regularly under-declared the prices actually paid for the land, within limits of a minimum price schedule kept by the notaries (to avoid paying full fees). For this reason official records on land sale prices are likely to be well under actual prices (see the discussion of land prices in the section on “Land Sales,” above).

Recommendations:

- Adopt regulations establishing maximum notary fees for different types of transfers. For example, provide that the maximum fee for land sales not exceed two percent of the declared sales value, or perhaps of a reasonable assessed market value developed for tax purposes. We would also suggest that other transfers such as exchange³⁵ or inheritance be subject to a significantly lower maximum fee, such as one-half of one percent of declared or assessed value, in order to encourage full documentation and registration of such non-cash transfers.³⁶
- Publicize the new notary fee schedule to the rural public.

2. Market information

The lack of information available to rural residents on land holdings and interested market participants creates a further impediment to sales and lease transactions. There is currently no adequate venue through which potential buyers, seller, lessees and lessors may access information on land markets in rural areas. The institution most closely resembling an organized venue, at least for land sales, is the “pre-emptive right” requirement that the owner of land offered for sale notify the local administration, which publicizes the offer to sell for 45 days.³⁷ Within this time period the pre-emptive rightholders (co-owners, neighbors and lessees) have the opportunity to make an offer to buy the land. The seller must accept the offer only if the price is satisfactory. Farmers and other land rightholders reported that this posting requirement is not onerous, and in fact serves to inform some interested buyers of specific opportunities. The posting requirement, however, only partially fulfills the need for information brokerage: it does not provide a systematic means for potential buyers, for example, to identify potential sellers who may possess mutually contiguous parcels. Nor does it provide information on the lease market.

parents, and brothers/sisters, the fee is 0.5% of the price listed in the contract, but not less than 50% of the minimum monthly wage; (2) for everyone else, the fee is 1.5% of the price listed in the contract, but not less than the minimum monthly wage.

³⁵ Technically an exchange may be considered a type of sale in which both parties are selling land in return for a payment that takes the form of land rather than cash. But some legal systems are accustomed to treating exchanges and sales separately, and there is good reason to encourage the exchange of agricultural land parcels in settings such as Romania, where fragmentation of holdings is common.

³⁶ Furthermore, do not privatize the land registration system, least of all into the hands of the notaries, who as a group have proven adept at charging high fees, and are widely disliked as a consequence.

³⁷ See Art. 7 of the law “On Legal Circulation of Land” (1998).

The lack of an adequate information venue is especially problematic given the typical fragmentation of restituted land holdings into several disparate parcels. Fragmentation raises the implicit costs for conducting transactions, and heightens the need for information brokerage. Because the focus of restitution in the breakup of collective farms was on egalitarianism, an individual holding of 2.5 hectares is often composed of 3 to 4 parcels of arable land of different soil qualities, as well as separate parcels for vineyard and orchard. These various parcels can sometimes be several—in a few instances up to 25--kilometers apart. Fragmentation makes the task of a potential purchaser or lessee who wants to control a contiguous area of land quite daunting, as even a 5-hectare piece of land may contain holdings of ten different people, only several of whom are local residents. It also creates difficulties for potential sellers or lessors, as they may have to organize exchanges with other landowners to gain a marketable holding.

With access to adequate channels of information, it appears possible to overcome the impediment created by fragmentation. As mentioned above, we encountered two cases where prospective lessees were able to overcome the fragmentation hurdle through access to a unique information forum: one used his position as mayor to access land records and the other owned a cantina in which he could post notice and spread by word of mouth that he wanted to lease in land.

Recommendations:

- Develop “listing services” to provide information on potential seller or lessors and on potential buyers or lessees in rural areas. This could be done through public agencies, such as ANCA, or through private agencies. Such listing services could use bulletin boards or flyers in the commune, local newspapers, radio or television, or even computer Websites.
- Provide (through the state, with assistance from foreign donors) brokerage fees to private consultants for closing sales of agricultural land between private sellers and private buyers.³⁸ Consultants could assist parties to fill out standardized land sales contracts, get the contract notarized, and register the transaction.
- Consider implementing auctions for rural land, initially on a pilot basis (see section on “Land Sales,” above). These could be announced far in advance and be well-publicized to increase the range of interested sellers and buyers.

Land Tax

Several groups of farmers identified the pending land tax as a concern. To be effective, any future land tax should be levied at low rates and should be kept as simple as possible. In even the poorest areas, farmers said they would be able to afford a land tax if it is quite modest, say of 25,000 lei (\$1.67) per hectare. A land tax at significantly higher levels will be felt as a

³⁸ One such program now exists in the Republic of Moldova. The United States Agency for International Development Project to Develop Land and Real Estate Markets currently pays private consultants a modest fee for closing the sale of agricultural land or enterprise land between a private seller and private buyer.

substantial burden by the poorer segments of the rural population. The best choice will be to levy the tax at a low rate and reduce the number of obstacles to fair and efficient implementation. One such obstacle would be a complicated, many-tiered valuation system based on a wide variety of land and soil “quality” characteristics; a simplified valuation procedure combined with a uniform, low rate allows for less discretion by local tax officials and a greater chance that tax revenues will actually be collected.

It is unclear how the land tax burden will be shared among lessees and lessors. One leader of a large legal association planned to split the burden according to the relative percentage of production kept by lessee and lessor (80/20 in that case).

Revenues from a land tax should be distributed largely to local governments (rather than regional or central governments), where they can be used for schools, hospitals, social services and infrastructure. Local revenue distribution (rather than funneling revenues back toward the central government), helps to ensure support for the tax system from the local governments themselves (which usually must finance land valuation and tax collection) and from the tax payers, who are more likely to see positive results from their tax payments when revenues are invested in local projects.

Recommendations:

- Establish a land tax at a low, uniform rate, applicable to all agricultural land. Average rates applicable to agricultural land in countries with developed market economies are usually between 0.5 to 1.5 percent of the assessed (supposedly “market”) land value. (If we take the official/reported average market value as around 5.3 million lei, one-half of one percent is around 25,000-30,000 lei per hectare [26,500 lei per hectare], the level that seems universally acceptable—at that level, people will also probably cooperate in paying the land tax, laying a future base for an effective— [and if necessary higher] tax.)
- In establishing a land tax base (whether determined by approximations of market values, presumptive income of the land area, or actual market values), keep valuation procedures transparent and simple.³⁹
- Provide for land tax revenues to be distributed largely to local governments for investment in schools, hospitals, social services and infrastructure.
- Concentrate on collection from all tax subjects, including associations and state farms, to ensure adequate revenues.
- Consider allowing for payment in kind (or at least in wheat).

³⁹ The simplest by far, of course, would be an initial uniform tax such as 25,000 lei per hectare on all agricultural land, regardless of use or actual value. Levied on 10.5 million hectares of privatized land, this could yield around 262 billion lei of revenue a year (around \$17 million).

Mortgage

One major constraint on the market for sale of agricultural land is the virtual absence of bank financing of sale transactions through mortgage loans. Such financing, often called “purchase money mortgage,” allows the land buyer to pay the seller principally with money from the bank; the buyer then repays the bank over a period of time (often 10 to 30 years) and the land provides security to guaranty such repayment. In Romania today, the Banking Law (and the Code of Civil Procedure) establishes basic parameters allowing such mortgage of agricultural land, but mortgage has not yet developed in rural areas. Instead, the buyer must use his or her own cash resources. This greatly limits the potential number of land market participants,⁴⁰ and makes purchase of land virtually impossible for many small farmers.⁴¹ Many farmers we interviewed expressed interest in engaging in mortgage borrowing to buy land if it could be done at a reasonable and predictable interest rate.

The primary deterrent to banks in considering the offering of mortgage loans to farmers appears to be the lack of predictable market values for agricultural land, stemming in part from the newness and thinness of the market. Stable market prices are crucial to the bank in the event of nonpayment and foreclosure. As the emerging market activity leads land market prices to become more predictable, banks may begin to make mortgage loans on agricultural land. Certain technical amendments to existing laws relating to mortgage may also encourage banks to accept agricultural land as security. The most important of these would probably relate to the current restriction in the “Banking Law” of March 1998, which limits bank ownership of land to two years—applying most notably to the case where there is no adequate outside offer at a foreclosure sale and the bank must take ownership itself while seeking an interested buyer. (U.S. law also has such a limit, but it is five years.⁴²) Adding to the perceived risk involved with agriculture is the lack of adequate crop insurance in Romania. Farmers reported that private crop insurance is available, but is of limited value, as it covers damages from neither the worst

⁴⁰ Evidence of the valuable role that purchase money mortgage can play in facilitating land market development is provided by data comparing the annual incidence of sales of all privately owned land (both urban and rural) and the annual incidence of mortgage in several Central and Eastern European countries on the one hand, and in the EU on the other. A level of annual issue of mortgages which is equal to no more than 0.2 percent of all land titles in each of six Central and Eastern European countries corresponds with an annual level of land sales which is equal to no more than 2.5 percent of all land titles. (In all but the case of Hungary, the annual level of land sales does not exceed 1.0 percent. Interestingly, the level of annual issue of mortgages in Hungary, although still quite low at 0.2 percent, is twice that of any of the other five Central and Eastern European countries studied.) On the other hand, a level of annual issue of mortgages equal to 9 percent of all land titles in the EU corresponds with an annual level of land sales equal to 7 percent of all land titles. Dale & Baldwin, *supra* note 18, at 15.

⁴¹ The risks to the farmer involved with purchase money mortgage to acquire new land are less than those involved with mortgaging his or her original (and sole) land base for machinery or other capital expenses. Although mortgaging land to buy machinery should not be prohibited by law, educational materials (e.g., those distributed through ANCA,) should underline the risks involved with mortgage, and should encourage farmers to reserve mortgage to finance new land acquisitions or major infrastructural improvements to their existing land (one example of this type of improvement might be implementation or substantial renovation of vineyards).

To the extent that lack of access to machinery impedes small farmers' success (and thus stifle the market value of the land held in small farms), developing the means to increase small farmers' access to machinery will also be important. One possibility would be for the state to offer partial guarantees to banks of installment contracts; this would reduce the banks' risk of assuming such contracts from machinery suppliers (the original seller/lenders), and thus encourage suppliers to enter installment contracts at reasonable rates with farmers.

⁴² 12 UNITED STATES CODE sec. 29 (1997)(original law adopted June 3, 1864).

and most common pests nor drought. It is also considered to be too expensive. Very few private farmers appear to buy this crop insurance. State crop insurance is not available.

A further deterrent to mortgage for both banks and landowners is the extremely high and unpredictable interest rate. We heard reports of a current interest rate of 70 percent, and another report of a rapid increase in rates over a short period of time. One IAS manager told us the interest rate had tripled in one and a half years. Banks doubt that farmers could repay at these high rates, and most farmers are unwilling to borrow. High real interest rates (the positive spread between actual interest rates and the current rate of inflation) are, of course, quite characteristic of economies in which there is, or has recently been, a substantial increase in the rate of inflation.

Recommendations:

- Develop several pilot projects for mortgage in areas where a rural land market is gaining momentum. Perhaps begin with mortgage of higher-value and more marketable lands, such as vineyards. To encourage this, the state could: (1) encourage bank participation in the project through an initial partial guarantee (see recommendation following); and (2) offer subsidized credit to encourage small farmers to buy land.
- Consider adopting partial state guarantees for mortgages on agricultural land to encourage mortgage lending. By guaranteeing a percentage of the bank's mortgage lending portfolio (on agricultural land), the state would reduce the bank's risk until land market values become more stable. State guarantee programs currently exist in the Czech Republic, Latvia, Poland, Hungary and Slovakia. If such a state guarantee program is implemented, the guarantee should not reach 100%, and both the banks and farms should share an adequate risk for credits.
- Lengthen the maximum period of time for bank ownership of land to at least an automatic three years, and perhaps (as in the United States) to five years.
- Encourage farmers' access to an adequate quality of crop insurance, whether through private companies or through mandatory state policies. In some settings, government crop-insurance programs are mandatory, thus spreading risk across the entire agricultural sector and permitting low rates to be charged with little or no subsidization. Adequate crop insurance would not only reduce the general risk to farmers, but would also reduce the risk to lenders that farmers would not repay their loans, and thus would encourage mortgage (and other) lending at reasonable rates. One possibility might be for the mortgagee to be an immediate beneficiary of the crop insurance proceeds should they be drawn upon.

Legal Aid/ Contract Enforcement

Legal means of contract enforcement, important to the operation of the land markets, are not accessible to most market participants in rural Romania. Without such means, there will be a greater tendency to restrict transactions to persons with whom there is some preexisting

connection and to depend exclusively on community standards and values for contract compliance. This is probably more a problem for leases, where there is an ongoing relationship and a promise of future payment, than for sales, where there is normally a single definitive exchange of ownership and money at a single point in time. Small land-holders are particularly vulnerable to contract breach by larger lessees, as lease payments are often their only stable source of income. We encountered several instances where lessees breached lease agreements with small-holders, leaving them with no income and no recourse for seeking damages.

In Duravatsu village in Tulcea, for example, a group of pensioners who owned land agreed to lease their land out to a single lessee for ten years. In the first year (1998), he took their vouchers and all but 8% of their harvest (200 kg. wheat) and returned to his home in a neighboring village. They learned afterward that the same man had similarly cheated people in a different locality the year before, but they had had no way to find this out.

In Vaslui *judet*, a pensioner reported that he leased out his land last year to a leader of an association. He paid her all the costs she required up front for plowing and preparing the soil. After she plowed the land, however, she abruptly broke her end of the deal and didn't plant, saying his land was too far away from her other holdings. Although the pensioner was able to plant the land himself, he paid a greater amount for cultivating costs than he would have had he done it himself.

In these instances the landowners told us they did not have enough money to take the lessee to court, and knew of no other way to press for damages. Even if they had money to take their claims to court, they felt the process would be long and cumbersome. Without free legal services available to enforce contracts in rural land markets, some small-holders, often those living closest to the poverty margin, will be cheated.

A further potential area for legal services may be resolution of ongoing disputes, often between heirs, as to ownership interests in restituted land. In some *judets* such as Constanta these are still numerous and form a serious impediment to land market activity.

Another role for legal services may be in helping to ensure greater clarity in both sale and lease transactions by helping in drafting documents and explanation of terms to the parties (a function that may partially overlap with the functions performed—very expensively—by notaries).

Still another role could involve broader dissemination of information bearing on the functioning of land sale and lease markets.

Recommendations:

- Create legal aid centers to provide subsidized or free legal services to rural market participants.⁴³ One of the major activities of the centers would be widespread publicization in rural areas of legal rights and obligations between land market participants. These centers could also provide information on brokerage services, legal advice to potential sellers, and information and assistance in organizing service organizations for small farmers to pool resources for machinery, processing or marketing.
- Establish “circuit-riding” courts, if necessary, to cover disputes in rural areas. (See recommendation in section on “Sales” above.)
- Train judges in land law and land rights issues.

State Farm (IAS) Privatization⁴⁴

The former state farms (IASs) continue to cultivate approximately 1.8 million hectares of agricultural land in Romania. Part of this land is already well along the process toward privatization. The law "On Land Resources," in conjunction with the law "On Lease" (both republished in 1998), provides that people whose land had been taken and placed under the administration of a state farm could choose to be designated as “locators.” If this option was chosen, they could conclude a five-year lease with the agricultural company using the land, after which the locator would be issued an ownership document to a land parcel. These five-year leases were largely concluded in 1994 and 1995, so are now beginning to expire. (Many farmers we spoke with expect to receive their private land from IASs in the autumn of 1999, following the harvest.) This process, once completed, is expected by officials in Bucharest with whom we spoke, to result in one million hectares of former state farm land being privatized.

A primary issue regarding IAS privatization is whether both locators and shareholders are entitled to receive land in kind, or whether only locators are so entitled. The law on this issue is somewhat ambiguous. Article 36 in the 1991 law “On Land Resources” (Article 37 in the version republished in 1998) provided that all restitution claimants to IAS land would be made IAS shareholders, receiving shares in proportion to the relative size of their land claims. According to Article 25 of the 1994 law “On Lease” (as republished in 1998), IAS shareholders were allowed to opt within one year of the promulgation of the Law on Lease (in 1994) to choose the status of “locator”, which would have entitled this person to claim land in kind upon the expiration of a five-year lease period. Both the law “On Land Resources” and the law “On Lease” are silent, however, as to whether shareholders who did not take advantage of the one-

⁴³ The Rural Development Institute established, and continues to advise, two local legal-aid centers in Russia, although these must perform a more significant part of their role in defending or vindicating existing private land rights. See Leonard Rolfes & Bradley Rorem, *Legal Assistance in Rural Russia: A Report on the Activities of the “Center for Land Reform Support of Vladimir Oblast”* (RDI Reports on Foreign Aid and Development #93: May 1997, on file at the Rural Development Institute).

⁴⁴ Detailed field research into issues around the privatization of former state farms was beyond our scope of work; we decided to include this section in our report because of the frequency of comment and concern we heard on IAS privatization during our fieldwork, and because we believe the privatization could have a marked effect on agricultural land markets.

year opportunity to become locators are entitled to receive land in kind. Of course, it would seem grossly unfair that any shareholder who missed a one-year opportunity five years ago to claim land in kind would thereafter be prohibited from any future in-kind claim, especially in the absence of any explicit provision to that effect. In fact, we encountered a widespread belief among shareholders, IAS management, and ANCA officials that shareholders (whether or not they had opted to become locators by signing a five-year lease in 1994 or 1995) would be entitled to receive land in kind, as early as the fall of 1999.

Recommendation:

- Clarify in the law and regulations on IAS privatization (currently being drafted), that all shareholders having initial land rights, whether or not they became locators, will have the right to claim land in kind.

A second issue relating to IAS privatization is that farmers who have claims to IAS land favor rapid restitution of this land in consolidated (rather than fragmented) parcels. Restitution of former IAS lands relates to land market development, since it should put a significant additional amount of land into private ownership, where it can be used, sold or leased according to market conditions. Restitution of the collective (CAP) land under Law No. 18 created many problems (see discussion above under “Transaction Costs”) through fragmenting holdings in an effort to achieve a high level of egalitarianism. Importantly, it appears that farmers who have claims on IAS land have observed the shortcomings of that earlier process, and now largely desire a process that is rapid and that allows them to get a consolidated (rather than fragmented) holding. ANCA consultants, local officials, and IAS managers also favor restitution in consolidated parcels.

Recommendation:

- Provide in the laws and regulations controlling IAS break-up that locators and shareholders will receive consolidated parcels to the greatest extent possible. Provide assistance and advice to individual IASs to make certain the break-up of IAS land occurs as quickly, efficiently, and fairly as possible (after the 1999 harvest).

A further critically important issue concerning the restitution of IAS assets is the allocation and distribution of non-land property shares. Currently, IAS managers and land claimants believe that individual locators and non-locator share-holders will not be entitled to a portion of the farm’s non-land assets when they leave. IAS managers and some local officials favored allocating assets, such as tractors and combines, only to large legal associations, or keeping them for use by the residual (in most cases smaller) IASs. Allocating non-land assets to legal associations and remaining state farms, however, will further the inequities between large and small-farm production. Indeed, it will create strong pressures to lease the newly claimed land back to the IAS or legal associations that receive those non-land assets. (As noted above, one of the most serious constraints to increasing the land area and production of small, individual farmers in Romania is a lack of access to machinery.) By allocating property shares in-kind equally to all IAS restitution beneficiaries, groups of individual farmers could pool their shares to hold a tractor or combine in common.

Recommendations:

- Establish rules and regulations for the allocation of non-land property from the IASs, so that it occurs simultaneous to the allocation of land.
- Provide that all IAS restitution beneficiaries are privy to a share of the non-land assets. Distribute machinery through adequately designed auctions or other methods, utilizing non-land property rights as the only bidding “currency”, to the highest bidders (which may be groups of individual farmers who have pooled their shares.) The regulations for such allocation, however, need to be very carefully crafted to ensure fair access for individual farmers and small family associations.⁴⁵

⁴⁵ There has been previous experience with efforts to allocate non-land assets, by auction or otherwise, in Russia, the Republic of Moldova, and indeed in Romania itself. Much of this experience has not been positive, but a number of lessons have hopefully been learned.

SUMMARY OF RECOMMENDATIONS

Sales

- Encourage the use of purchase money mortgage to finance new land sales (see below). It should be kept in mind that virtually all agricultural land sales currently are for 100 percent buyer's cash, with no financing.
- Establish channels for efficient dispute resolution of remaining restitution claims, often involving multiple claimants such as heirs. One way to do this would be to increase the capacity of existing court system of general jurisdiction. Another possibility would be to establish special land courts, either with jurisdiction over one or several types of land disputes, or with broad jurisdiction over nearly all land disputes. Establishing "circuit rider" courts (where one to three judges travel throughout a broad jurisdiction, sitting "in court" in selected central points within their jurisdiction on pre-specified days each month) could be another way to reach rural regions of the country where disputes may still hamper land market development. Finally, an alternative, more efficient method of dispute resolution, such as arbitration, could be developed to address land disputes.
- Consider establishing auctions for land in rural areas. These could be tried through pilot projects in areas where agricultural land markets are clearly taking hold.
- Establish land market information/brokerage services for rural areas (see section on "Transaction Costs" below).

Transaction Costs

- Adopt regulations establishing maximum notary fees for different types of transfers. For example, provide the maximum fee for land sales not exceed two percent of the declared sales value, or perhaps of a reasonable assessed market value developed for tax purposes. We would also suggest that other transfers such as exchange or inheritance be subject to a significantly lower maximum fee, such as one-half of one percent of declared or assessed value, in order to encourage full documentation and registration of such non-cash transfers.
- Publicize the new notary fee schedule to the rural public.
- Develop "listing services" to provide information on potential seller or lessors and on potential buyers or lessees in rural areas. This could be done through public agencies, such as ANCA, or through private agencies. Such listing services could use bulletin boards or flyers in the commune, local newspapers, radio or television, or even computer Websites.
- Provide (through the state, with assistance from foreign donors) brokerage fees to private consultants for closing sales of agricultural land between private sellers and private buyers. Consultants could assist parties to fill out a standardized land sales contract, get the contract notarized, and register the transaction.

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- Consider implementing auctions for rural land, initially on a pilot basis (see section on “Sales”, above). These could be announced far in advance and be well publicized to increase the range of interested sellers and buyer.

Land Tax

- Establish a land tax at a low, uniform rate, applicable to all agricultural land. Average rates applicable to agricultural land in countries with developed market economies are usually between 0.5 to 1.5 percent of the assessed (supposedly “market”) land value. (If we take the official/ reported average market value as around 5.3 million lei, one-half of one percent is around 25,000-30,000 lei per hectare [26,500 lei per hectare], a level that seems universally acceptable—at that level, people will also probably cooperate in paying the land tax, laying a future base for an effective--and if necessary higher--tax.)
- In establishing a land tax base (whether determined by approximations of market values, presumptive income of the land area, or actual market values), keep valuation procedures transparent and simple.
- Provide for land tax revenues to be distributed largely to local governments for investment in schools, hospitals, social services and infrastructure.
- Concentrate on collection from all tax subjects, including associations and state farms, to ensure adequate revenues.
- Consider allowing for payment in kind (or at least in wheat).

Mortgage

- Develop several pilot projects for mortgage in areas where a rural land market is gaining momentum. Perhaps begin with mortgage of higher-value and more marketable lands, such as vineyards. To encourage this, the state could: (1) encourage bank participation in the project through an initial partial guarantee (see recommendation following); and (2) offer subsidized credit to encourage small farmers to buy land.
- Consider adopting partial state guarantees for mortgages on agricultural land to encourage mortgage lending. By guaranteeing a percentage of the bank’s mortgage lending portfolio (on agricultural land), the state would reduce the bank’s risk until land market values become more stable. State guarantee programs currently exist in the Czech Republic, Latvia, Poland, Hungary and Slovakia. If such a state guarantee program is implemented, the guarantee should not reach 100%, and both the banks and farms should share an adequate risk for credits.
- Lengthen the maximum period of time for bank ownership of land to at least an automatic three years, and perhaps (as in the United States) to five years.

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- Encourage farmers' access to an adequate quality of crop insurance, whether through private companies or through mandatory state policies. In some settings, government crop-insurance programs are mandatory, thus spreading risk across the entire agricultural sector and permitting low rates to be charged with little or no subsidization. Adequate crop insurance would not only reduce the general risk to farmers, but would also reduce the risk to lenders that farmers would not repay their loans, and thus would encourage mortgage (and other) lending at reasonable rates. One possibility might be for the mortgagee to be an immediate beneficiary of the crop insurance proceeds should they be drawn upon.

Legal Aid/ Contract Enforcement

- Create legal aid centers to provide subsidized or free legal services to rural market participants. One of the major activities of the centers would be widespread publication in rural areas of legal rights and obligations between land market participants. These centers could also provide information on brokerage services, legal advice to potential sellers, and information and assistance in organizing service organizations for small farmers to pool resources for machinery, processing or marketing.
- Establish "circuit-riding" courts, if necessary, to cover disputes in rural areas. (See recommendation in section on "Sales" above.)
- Train judges in land law and land rights issues.

IAS Privatization

- Clarify in the law and regulations on IAS privatization (currently being drafted), that all shareholders having initial land rights, whether or not they became locators, will have the right to claim land in kind.
- Provide in the laws and regulations for IAS break-up that locators and share-holders will receive consolidated parcels to the extent possible. Provide assistance and advice to individual IASs to make certain the break-up of IAS land occurs as quickly, efficiently, and fairly as possible (after the 1999 harvest).
- Establish rules and regulations for the allocation of non-land property from the IASs, so that it occurs simultaneous to the allocation of land.
- Provide that all IAS restitution beneficiaries are privy to a share of the non-land assets. Distribute machinery through adequately designed auctions or other methods, utilizing non-land property rights as the only bidding "currency", to the highest bidders (which may be groups of individual farmers who have pooled their shares.) The regulations for such allocation, however, need to be very carefully crafted to ensure that there really exists fair access for individual farmers and small family associations.

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