

Project Identification Study on Industry
(Advanced Intellectual Assistance and Cooperation for the
Promotion of Small and Medium Enterprises)
Final Report

The World Bank
European Bank for Reconstruction and Development
Asian Development Bank
Inter-American Development Bank
Organization for Economic Cooperation and Development (OECD)
United States Agency for International Development
Poland
Bulgaria
Indonesia
Malaysia
Philippines
Thailand
Cambodia
Laos
Vietnam
Bangladesh

March 2000

Japan International Cooperation Agency (JICA)
Mining and Industrial Development Study Department

**Mining Project Selection Confirmation Study
(Advanced Intellectual Assistance and Cooperation for the
Promotion of Small and Medium Enterprises)
Table of Contents**

Chapter 1	Overview of Study	1
1-1	Background and progress	1
1-2	Purpose of study	3
1-3	Members of the mission	3
1-4	Study schedule.....	6
Chapter 2	Promotion of Small and Medium Enterprises and Systems	11
2-1	Promotion of small and medium enterprises and framework of the system (laws, outline of systems, changes and influences on enterprises)	11
2-1-1	Legal systems	11
2-1-1-1	Formations and activities	13
2-1-1-2	Currency	20
2-1-1-3	Competition	26
2-1-2	Taxation and accounting system	29
2-1-2-1	Accounting system	29
2-1-2-2	Taxation law (corporation tax, income tax, customs, value-added tax, etc.)	31
2-1-3	Promotion of small and medium enterprises	33
2-1-3-1	Small and medium enterprise promotion related laws (Small and Medium Enterprise Basic Law)	41
2-1-3-2	Laws and policies for strengthening corporate management base of small and medium enterprises (finance, investment, bankruptcy prevention, etc.)	43
2-1-3-3	Laws and policies concerning structural changes of small and medium enterprises (technical policy, informatization, labor measures, environment, transformation economy promotion, etc.)	46
2-1-3-4	Laws and policies concerning small and medium enterprise measures.....	49
2-2	Small and medium enterprise promotion policy models and supporting systems	50
Chapter 3	Undertakings by Other Assistance Organizations concerning the Promotion of Small and Medium Enterprises and Their Problems	55
3-1	General trend in assistance organization	55
3-2	Financial institutions for international development	55
3-2-1	World Bank	55
3-2-2	Inter-American Development Bank	58
3-2-3	European Bank for Reconstruction and Development	60
3-2-4	Asian Development Bank	62
3-3	Other international organization	63

3-3-1	Organization for Economic Cooperation and Development	63
3-4	Governmental assistance organization	65
3-4-1	United States Agency for International Development	65
Chapter 4	State of Consolidation of Legal System concerning the Promotion of Small and Medium Enterprises in Each Country	69
4-1	Summary	69
4-2	General trends	75
4-3	Central and Eastern Europe	76
4-3-1	Poland	76
4-3-1-1	Already consolidated legal system (Relation with the EU Directives and EU Regulations)	76
4-3-1-2	Problems arising in enforcing legislation	80
4-3-1-3	Problems caused by introduction of the international accounting standards	82
4-3-1-4	Current state of abiding by the accounting standards at enterprise level and points at issue	83
4-3-1-5	The present state of the taxation system and the points at issue	83
4-3-1-6	The present state of the policy for small and medium enterprises and the points at issue	84
4-3-1-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation	89
4-3-2	Bulgaria	90
4-3-2-1	Already consolidated legal system (Relation with the EU Directives and EU Regulations)	90
4-3-2-2	Problems arising in enforcing legislation	93
4-3-2-3	Problems caused by introduction of the international accounting standards	94
4-3-2-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	95
4-3-2-5	The present state of the taxation system and the points at issue	96
4-3-2-6	The present state of the policy for small and medium enterprises and the points at issue	97
4-3-2-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation	100
4-4	ASEAN (Countries shifting to market economy)	101
4-4-1	Indonesia	101
4-4-1-1	Already consolidated legal system	101
4-4-1-2	Problems arising in enforcing legislation	106
4-4-1-3	Problems caused by introduction of the international accounting standards	107
4-4-1-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	108
4-4-1-5	The present state of the taxation system and the points at issue	109

4-4-1-6	The present state of the policy for small and medium enterprises and the points at issue	110
4-4-1-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	114
4-4-2	Malaysia.....	115
4-4-2-1	Already consolidated legal system	115
4-4-2-2	Problems arising in enforcing legislation	118
4-4-2-3	Problems caused by introduction of the international accounting standards.....	118
4-4-2-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	119
4-4-2-5	The present state of the taxation system and the points at issue.....	120
4-4-2-6	The present state of the policy for small and medium enterprises and the points at issue	121
4-4-2-7	Future direction of the promotion of small and medium enterprises and related which need further consolidation	127
4-4-3	The Philippines.....	128
4-4-3-1	Already consolidated legal system	128
4-4-3-2	Problems arising in enforcing legislation	131
4-4-3-3	Problems caused by introduction of the international accounting standards.....	131
4-4-3-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	132
4-4-3-5	The present state of the taxation system and the points at issue.....	133
4-4-3-6	The present state of the policy for small and medium enterprises and the points at issue	134
4-4-3-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	139
4-4-4	Thailand.....	140
4-4-4-1	Already consolidated legal system	140
4-4-4-2	Problems arising in enforcing legislation	143
4-4-4-3	Problems caused by introduction of the international accounting standards.....	145
4-4-4-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	147
4-4-4-5	The present state of the taxation system and the points at issue.....	147
4-4-4-6	The present state of the policy for small and medium enterprises and the points at issue	148
4-4-4-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	152
4-5	ASEAN (Countries shifting to market economy)	152
4-5-1	Cambodia	152
4-5-1-1	Present state of legal system in planning stage	152
4-5-1-2	Problems arising in enforcing legislation	155

4-5-1-3	Problems caused by introduction of the international accounting standards	156
4-5-1-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	158
4-5-1-5	The present state of the taxation system and the points at issue	158
4-5-1-6	The present state of the policy for small and medium enterprises and the points at issue	160
4-5-1-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	163
4-5-2	Laos	163
4-5-2-1	Present state of legal system in planning stage	163
4-5-2-2	Problems arising in enforcing legislation	167
4-5-2-3	Problems caused by introduction of the international accounting standards.....	168
4-5-2-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	170
4-5-2-5	The present state of the taxation system and the points at issue.....	170
4-5-2-6	The present state of the policy for small and medium enterprises and the points at issue	171
4-5-2-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	174
4-5-3	Vietnam	175
4-5-3-1	Already consolidated legal system	175
4-5-3-2	Problems arising in enforcing legislation	179
4-5-3-3	Problems caused by introduction of the international accounting standards.....	180
4-5-3-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	182
4-5-3-5	The present state of the taxation system and the points at issue.....	182
4-5-3-6	The present state of the policy for small and medium enterprises and the points at issue	184
4-5-3-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	188
4-6	Other Asian countries	188
4-6-1	Bangladesh	188
4-6-1-1	Already consolidated legal system	188
4-6-1-2	Problems arising in enforcing legislation	191
4-6-1-3	Problems caused by introduction of the international accounting standards.....	191
4-6-1-4	Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue	192
4-6-1-5	The present state of the taxation system and the points at issue.....	193
4-6-1-6	The present state of the policy for small and medium enterprises and the points at issue	195
4-6-1-7	Future direction of the promotion of small and medium enterprises and related systems which need further consolidation.....	198

Chapter 5	Advanced Intellectual Assistance and Cooperation by Japan	199
5-1	Planned items of possible cooperation for arrangement of various systems	199
5-1-1	Legal system	199
5-1-2	and accounting system	200
5-1-3	Small and medium enterprises policy	201
5-2	Cooperation implementation plan	203
5-2-1	Method of cooperation in various countries according to degree of economic development	203
5-3	Future tasks	210

Chapter 1 Overview of Study

1-1 Background and progress

In recent years, requests for international cooperation for formulating general policies for promoting small and medium enterprises have been increasing. However, most of the existing cooperation programs in response to such requests involve proposing policies in specific fields, such as financial and managerial techniques. Another approach now being tried is to analyze the economic development of a nation and its small and medium enterprises, to theorize the corporate development stages in that nation centering on economics, and to systematize the cooperation methods for that nation.

An example of this kind of trial approach is a series of meetings held in fiscal 1999 by the **✕** Cooperation Promotion Committee for Small and Medium Enterprises Promotion under the auspices of the JICA Mining Development Study Department. The Cooperation Promotion Committee discussed and concluded that a **✕**Level Playing Field for fair competition must be furnished regardless of differences in national development stages as illustrated by the fact that some ASEAN member nations are already forming the base for such a **✕**Level Playing Field while other nations are currently transforming to a market economy. Professor Itami, who is playing a major role in studies regarding a Level Playing Field (**✕**Ba in Japanese) in Japanese management, defines the term **✕**Level Playing Field as a **✕**situational framework where people participate in common events, observe and communicate with others consciously or unconsciously, try to understand others and cooperate with others, and share common experiences (**✕**Dynamism of the Level Playing Field and Corporations by Hiroyuki Itami et al.). In other words, **✕**Level Playing Field is defined as an area where management know-how, techniques, and data are accumulated and new information is also created. This publication adopts the term **✕**Level Playing Field in a rather broader meaning, namely as the marketplace where companies exist and conduct business. In this publication, as the translation of **✕**Ba we dare to use the term **✕**Level Playing Field, which is the keyword among researchers worldwide when they discuss the promotion of small and medium enterprises. Therefore, in order to realize **✕**Ba or a **✕**Level Playing Field in a nation, the implementation of relevant laws and regulations and establishment of a corporate accounting system and other social systems become the starting point. Almost all of the Cooperation Promotion Committee members agree on this view.

Meanwhile, JICA as a whole has begun to formulate the **✕**Business Implementation Plans by Nation since 1999. This publication also points out that many of the nations mentioned therein need international cooperation in restructuring their legal system.

The current discussion on the global macro economy is mainly divided into two groups of thought. One is the so-called **✕**Neo Classic group that emphasizes the micro economic market and believes that economic growth depends on exogenous factors based on the law of decreasing return to scale. In other words, New Classicism denies the role of active government intervention in the economy because a change in government policy does not affect economic growth. Therefore, the government should concentrate on keeping the increase in the money supply at a fixed rate, in response to which

individuals will make rational decisions based on their expectations for the future. The other group of thought is the so-called **Neo Keynesian** group, which claims that since economic growth is brought about by endogenous technological development, the government needs to intervene in the economy.

However, even Robert Barro, a scholar playing a major role in advocating the economic growth theory of Neo Classicism which denies the role of government intervention in the economy, admits, **It is not true to say that the investments and government policies play no role in a nation's economy when applied according to the Neo Classic model.... When the government reduces the marginal tax rate, creates or adjusts the infrastructure, keeps commodity prices stable, and ensures laws and contracts are properly observed, the economic growth rate will rise in the long-term.** (**Getting It Right**, by Robert J. Barro). This view also emphasizes the importance of establishing the **Level Playing Field** mentioned earlier, transcending the differences between the two groups of thought. In this respect, concerning the question of what Japan can provide for acceptor nations to promote re-instituting of the above-mentioned legal systems, most officials in the Japanese government are now of the opinion that experts in different fields should provide recipient nations with their professional knowledge. Actually, the **Mid-Term Policies on Official Development Assistance** published in August 1998 by the Japanese government also advocates **intellectual assistance** for recipient nations in formulating policies and re-instituting systems, including legal systems. JICA has already conducted such cooperative projects in a number of nations, if we do not limit the activity to legal systems concerning corporations. However, practical examples of focusing on re-instituting legal systems are very few in number. Thus, in line with the aforementioned current of thought in the Japanese government, the Mining and Industrial Development Study Department has decided to assign an **Advanced Intellectual Assistance and Cooperation Study Mission** to a number of nations in fiscal 2000, following the programs of the Cooperation Promotion Committee.

Currently underway development studies have no room to include Advanced Intellectual Assistance and Cooperation programs because the terms of cooperation, etc. are limited. In new assistance and cooperation programs, however, lawyers, accountants, licensed tax accountants, and other qualified experts will be assigned as members of the mission to collect detailed data and analyze existing legal systems, which will contribute to the formation and reformation of legal and other social systems.

However, because of problems with respect to insufficient preliminary information concerning the legal systems of nations, selection of recipient nations for such cooperation will be difficult. Moreover, before assigning experts who will perform detailed studies, it is necessary to know what kinds of professions are requested. Also, after deciding on the mission members, it is necessary to collect basic data concerning the legal systems of acceptor nations to enable effective pre-mission study preparation. Programs of other donor nations must also be examined to avoid similar or overlapping programs.

Given this background, in fiscal 1999, it was decided to assign Project Identification Study Mission. The mission will focus on studying the situation regarding enterprises in each country, especially existing laws and systems concerning small and medium enterprises, actual cooperating statuses of

other international institutions in their respective fields, and their conditionality and so on.

1-2 Purpose of study

As a preliminary stage of Advanced Intellectual Assistance and Cooperation, scheduled to start in fiscal 2000, it is necessary to check the current situation concerning international organizations that are cooperating with acceptor nations in promoting the institution of legal systems with respect to corporations, and to research regarding the laws and other social systems of those nations. This study will help to clarify the professions necessary with respect to the experts to be assigned as members of the study mission. This pre-mission study data will also help assigned experts to conduct efficient preliminary study preparations before dispatch.

1-3 Members of the mission

(1) Mission Leader:

Masayuki Kondo (Professor, Entrepreneur course, Graduate School, Kochi Technological University)

Will participate in the mission visits to the USA, Britain, France, Bulgaria, Poland, and Thailand.

(2) Sub-Leader:

Shoji Kusuda (Planning Section Manager, JICA Mining and Industrial Development Study Department)

Will participate in the mission visits to Indonesia and Vietnam.

(3) Advisory:

Yukihiro Nikaido (Development and Cooperation Section Manager, Economic Cooperation Bureau, Ministry of Foreign Affairs)

Will participate in the mission visit to Indonesia.

(4) Technical Cooperation Policy: Akira Ikeda

(Development Cooperation Planning Officer, Economic Cooperation Bureau, Ministry of Foreign Affairs)

Will participate in the mission visits to the USA, Britain, and France.

(5) Technical Cooperation Policy:

Katsuro Nagai (Development Cooperation Section Chief, Economic Cooperation Bureau, Ministry of Foreign Affairs)

Will participate in the mission visit to Vietnam.

(6) Technical Cooperation Administration:

Shuji Tamura (Economic cooperation expert, Technical Cooperation Section, International Trade Bureau, Ministry of International Trade and Industry)

Will participate in the mission visits to Britain, France, the Philippines, and Bangladesh.

- (7) Technical Cooperation Administration:
Hironobu Okumura (Technical Cooperation Section, International Trade and Industry Bureau, Ministry of International Trade and Industry)
Will participate in the mission visit to the USA.
- (8) Technical Cooperation Administration:
Toshimi Takigawa (Technical Cooperation Section, International Trade and Industry Bureau, Ministry of International Trade and Industry)
Will participate in the mission visit to Thailand.
- (9) Technical Cooperation Administration:
Shuhei Fujiwara (Technical Cooperation Section, International Trade and Industry Bureau, Ministry of International Trade and Industry)
Will participate in the mission visit to Laos.
- (10) Technical Cooperation Administration:
Yoko Kato (Technical Cooperation Section, International Trade and Industry Bureau, Ministry of International Trade and Industry)
Will participate in the mission visit to Malaysia.
- (11) Technical Cooperation Administration:
Koichiro Yokoo (Economic Cooperation Section, International Trade and Industry Bureau, Ministry of International Trade and Industry)
Will participate in the mission visit to Vietnam.
- (12) Cooperation Planning:
Ken Yamada (Middle East and Europe Group, Preparation Office, JICA Region Department)
Will participate in the mission visits to Bulgaria and Poland.
- (13) Cooperation Planning:
Kazuki Otsuka (Southeast Asia Section, JICA Regional Department I)
Will participate in the mission visit to the Philippines.
- (14) Cooperation Planning:
Atsushi Soma (Southeast Asia Section, JICA Regional Department I)
Will participate in the mission visits to Cambodia and Thailand.
- (15) Cooperation Planning:
Mari Furukawa (Indochina Section, JICA Regional Department I)
Will participate in the mission visit to Laos.
- (16) Cooperation Planning:
Kojiro Matsumoto (Southeast Asia Section, JICA Regional Department I)

Will participate in the mission visit to Malaysia.

(17) Cooperation Planning:

Hiroyuki Katayama (Southeast Asia Section, JICA Regional Department I)

Will participate in the mission visit to Indonesia.

(18) Research and Planning:

Gaku Funabashi (Planning Section, JICA Mining and Industrial Development Study Department)

Will participate in the mission visits to the USA, Britain, France, Bulgaria, Poland, the Philippines, and Thailand.

(19) Legal System:

Sachihiro Tsubakimoto (Daiwa Research Institute)

Will participate in all of the mission visits.

(20) Tax and Accounting Systems:

Takio Ohshio (Asahi & Co.)

Will participate in all of the mission visits.

(21) Small and Medium-Sized Corporation Policy:

Toru Suetake (Asahi & Co.)

Will participate in all of the mission visits.

1-4 Study schedule

First on-site study and schedule

Day	Date	Day of the week	Lodging place	Kondo, Funabashi, Tsubakimoto, Oshio, Suetake	Other members
1	Dec. 5	Sunday	Washington D.C.	Tokyo → Washington D.C.	Ikeda and Okumura (same as left)
2	6	Monday	"	A.M.: USAID (Micro Enterprise Development) P.M.: JICA USA	"
3	7	Tuesday	"	A.M.: The World Bank (Private Sector Participation in Infrastructure) P.M.: The World Bank (Micro Enterprise Division)	"
4	8	Wednesday	"	A.M.: The World Bank, USAID P.M.: The World Bank, Inter-American Development Bank (Sustainable Development Division) Washington D.C. →	Okumura (lodging at Washington D.C.) Ikeda (same as left)
5	9	Thursday	Paris	→ Paris A.M.: JICA France P.M.: OECD	Okumura (Washington D.C. →) Ikeda (same as left) Tamura (join after another conference)
6	10	Friday	"	Intra-mission meeting, collecting documents	Okumura (→ Tokyo) Ikeda and Tamura (same as left)
7	11	Saturday	London	Paris → London	"
8	12	Sunday	"	Group meeting	"
9	13	Monday	"	A.M.: European Bank for Reconstruction and Development P.M.: JICA UK	"
10	14	Tuesday	Vienna	Whole day: EBRD (Turn Around Management) Lunch with TAM Group London → Vienna JETRO Vienna Center	Ikeda and Tamura (London →) Yamada (Tokyo → Vienna)
11	15	Wednesday	Sofia	Vienna → Sofia P.M.: JICA/JOCV Bulgaria, Embassy of Japan	Yamada (same as left)
12	16	Thursday	"	A.M. Ministry of Justice & Legislative European Integration, Privatization Agency, Accounting Firm P.M.: Ministry of Labor and Social Policy, Agency of Small and Medium Enterprises, Japanese trading firms	"
13	17	Friday	"	A.M. Ministry of Industry P.M.: Bulgarian Chamber of Commerce and Industry JICA/JOCV Bulgaria	"
14	18	Saturday	Warsaw	Sofia → Warsaw Intra-mission meeting	"
15	19	Sunday	"	Meeting with experts	"
16	20	Monday	"	A.M.: Ministry of Economy (Department of Economic Policy Measures) P.M.: JICA/JOCV Poland, Embassy of Japan	"
17	21	Tuesday	"	A.M.: Privatization Agency, American Chamber of Commerce in Poland, Accounting Firm P.M.: Ministry of Labour and Social Policy, JETRO	"

18	22	Wednesday	Warsaw	A.M.: Ministry of Interior and Administration P.M.: Polish Agency for Foreign Investment, Polish Chamber of Commerce, JICA/JOVC Poland, Embassy of Japan	Yamada (same as left)
19	23	Thursday	Onboard	Warsaw → Frankfurt →	"
20	24	Friday		→ Tokyo	"

Second on-site study and schedule

Day	Date	Day of the week	Lodging place	Tsubakimoto, Oshio, Suetake	Other members
1	Jan.10	Monday	Manila	Tokyo → Manila	Amano, Tamurra, Otsuka, Funabashi (same as left)
2	11	Tuesday	"	A.M.: JICA Philippines, Embassy of Japan P.M.: Asian Development Bank, National Economic Development Authority	"
3	12	Wednesday	"	A.M.: Board of Investment P.M.: Dept. of Trade & Industry	"
4	13	Thursday	"	A.M.: Dept. of Labor & Employment P.M.: Dept. of Finance	"
5	14	Friday	"	A.M.: Chamber of Commerce and Industry P.M.: Accounting Firm, JICA Philippines	"
6	15	Saturday	Bangkok	Manila → Bangkok	Tamura, Otsuka, Funabashi (Manila → Tokyo) Amano, Sohma (Tokyo → Bangkok)
7	16	Sunday	Phnom Penh	Bangkok → Phnom Penh	Amano, Sohma (same as left)
8	17	Monday	"	A.M.: JICA Cambodia P.M.: Embassy of Japan, Ministry of Justice	"
9	18	Tuesday	"	A.M.: Ministry of Economy & Finance P.M.: Ministry of Planning	"
10	19	Wednesday	"	A.M.: Ministry of Social Affairs, Labor, Vocational Training and Youth Rehabilitation P.M.: Ministry of Commerce	"
11	20	Thursday	"	A.M.: Sumitomo Corporation P.M.: Chamber of Commerce and Industry	"
12	21	Friday	"	A.M.: Council for the Development of Cambodia Ministry of Industry, Mines & Energy P.M.: Accounting Firm, JICA Cambodia	"
13	22	Saturday	Bangkok	Phnom Penh → Bangkok	Amano (Phnom Penh → Bangkok)
14	23	Sunday	"	Arranging documents	Amano (Bangkok → Tokyo) Kondo, Takigawa, Funabashi (Tokyo → Bangkok)
15	24	Monday	"	A.M.: JICA Thailand, Embassy of Japan P.M.: Thammasat University, JETRO	Kondo, Takigawa, Sohma, Funabashi (same as left)
16	25	Tuesday	"	A.M.: Chamber of Commerce P.M.: Ministry of Industry	"
17	26	Wednesday	"	A.M.: SIFC, Ministry of Labor & Social Welfare P.M.: Japanese Chamber of Commerce and Industry, Law Firm, Ministry of Commerce	"
18	27	Thursday	"	A.M.: Ministry of Finance P.M.: Ministry of Commerce, Thailand-Japan Technology Evaluation Institute	"
19	28	Friday	"	A.M.: Accounting Firm P.M.: JICA Thailand	"

20	29	Saturday	Vientiane	Bangkok → Vientiane	Kondo, Takigawa, Sohma, Funabashi (Bangkok → Tokyo)
21	30	Sunday	"	Arranging documents	Amano, Fujiwara, Furukawa (Tokyo → Vientiane)
22	31	Monday	"	A.M.: JICA Laos, Embassy of Japan P.M.: Ministry of Industry & Handicraft, Accounting Firm	Amano, Fujiwara, Furukawa (same as left)
23	Feb. 1	Tuesday	"	A.M.: Ministry of Trade & Tourism P.M.: Ministry of Finance, Cooperation & Investment Commission	"
24	2	Wednesday	"	A.M.: Bank of Lao PDR P.M.: Ministry of Labor & Social Welfare	"
25	3	Thursday	"	A.M.: Chamber of Commerce and Industry, National Economic Research Institutes P.M.: Ministry of Justice	"
26	4	Friday	"	A.M.: UNDP, Accounting Firm P.M.: JICA Laos	"
27	5	Saturday	Bangkok	Vientiane → Bangkok	Amano, Fujiwara, Furukawa (Vientiane → Bangkok), Tamura (Tokyo → Bangkok)
28	6	Sunday	Dacca	Bangkok → Dacca P.M.: JICA Bangladesh	Amano, Fujiwara, Furukawa (Bangkok → Tokyo) Tamura (Bangkok → Dacca)
29	7	Monday	"	A.M.: Embassy of Japan, Ministry of Finance P.M.: Ministry of Planning, Ministry of Industries, Ministry of Finance	Tamura (same as left)
30	8	Tuesday	"	A.M.: Board of Investment, Ministry of Labor & Employment P.M.: Ministry of Law, Justice & Parliamentary Affairs, Export Processing Zone Authority	"
31	9	Wednesday	"	A.M.: Ministry of Commerce, IMF, Federation of Chambers of Commerce and Industry P.M.: Internal Revenue Office	"
32	10	Thursday	"	A.M.: JBIC P.M.: JETRO, Accounting Firm	"
33	11	Friday	"	Arranging documents	"
34	12	Saturday	Kuala Lumpur	Dacca → Kuala Lumpur	Tamura (Dacca → Bangkok)
35	13	Sunday	"	Arranging documents	Tamura (Bangkok → Tokyo), Kato, Matsumoto (Tokyo → Kuala Lumpur)
36	14	Monday	"	A.M.: JICA Malaysia, Embassy of Japan P.M.: Japan Finance Corporation for Small Business	Kato, Matsumoto (same as left)
37	15	Tuesday	"	A.M.: Small & Medium Industries Development Corporation P.M.: Malaysian Industrial Development Authority	"
38	16	Wednesday	"	A.M.: Ministry of Entrepreneur Development P.M.: Federation of Malaysian Manufacturers, Japanese Chamber of Commerce and Industry	"
39	17	Thursday	"	A.M.: Department of Inland Revenue, Ministry of Domestic Trade & Consumer Affairs P.M.: Bank Industri Malaysia Berhad	"
40	18	Friday	"	A.M.: Credit Guarantee Corporation, Malaysian Industrial Development Finance Corporation P.M.: Accounting Firm, JETRO, JICA	"

				Malaysia	
41	19	Saturday	Jakarta	Kuala Lumpur → Jakarta	Kato, Matsumoto (Kuala Lumpur → Tokyo)
42	20	Sunday	"	Arranging documents	Kusuda, Katayama (Tokyo → Jakarta)
43	21	Monday	"	A.M.: JICA Indonesia, Embassy of Japan P.M.: Bappenas (National Development Planning Agency)	Kusuda, Katayama (same as left)
44	22	Tuesday	"	A.M.: Ministry of Manpower, Ministry of Industry & Trade P.M.: University of Indonesia	" Nikaido (Tokyo → Jakarta)
45	23	Wednesday	"	A.M.: Accounting Firm P.M.: Ministry of Finance	Kusuda, Nikaido, Katayama (same as left)
46	24	Thursday	"	A.M.: Bapepam (Capital Market Control Agency), Chamber of Commerce and Industry P.M.: Ministry of Cooperative, Small & Medium Enterprise	"
47	25	Friday	"	A.M.: Ministry of Law & Legal Affairs P.M.: Secretariat Cabinet, JICA Indonesia	"
48	26	Saturday	Hanoi	Jakarta → Hanoi	Kusuda (same as left), Nikaido, Katayama (Jakarta → Tokyo)
49	27	Sunday	"	Arranging documents	Nagai, Yokoo (Tokyo → Hanoi)
50	28	Monday	"	A.M.: JICA Vietnam, Embassy of Japan P.M.: Ministry of Planning and Investment, JETRO	Kusuda, Nagai, Yokoo (same as left)
51	29	Tuesday	"	A.M.: Ministry of Finance P.M.: Ministry of Industry, JBIC	"
52	Mar. 1	Wednesday	"	A.M.: Ministry of Science, Technology and Environment P.M.: Ministry of Trade, Pentax	"
53	2	Thursday	"	A.M.: Ministry of Labor, War Invalids & Social Welfare P.M.: Chamber of Commerce and Industry	Nagai (Hanoi → Tokyo)
54	3	Friday	"	A.M.: Accounting Firm, UNIDO P.M.: JICA Vietnam	Kusuda, Yokoo (same as left)
55	4	Saturday		Hanoi → Tokyo	"

Chapter 2 Promotion of Small and Medium Enterprises and Systems

2-1 Promotion of small and medium enterprises and framework of the system (laws, outline of systems, changes and influences on enterprises)

As stated in Chapter 1, Background and progress, instituting legal systems around the corporation is needed to prepare an environment for re-instituting Level Playing Field. This chapter describes mechanisms that individual laws and other social systems are related to, and influence, corporations and corporate activities.

2-1-1 Legal systems

Appropriate Level Playing Field must be provided for corporations, especially small and medium enterprises, to achieve and maintain their sustainable growth, progress of economic society, and employment. Furthermore, in order for fair competition to play an effective function in Playing Field, both opportunities to participate in Playing Field and freedom of participating in Playing Field must be secured.

More specifically, Playing Field means “ Institutional Infrastructure, ” and providing fair competition in Level Playing Field means “ forming institutional infrastructure. ” And there must be a legal system that can predict economic and social effects to which activities of individual corporations are related. In other words, Level Playing Field requires that a legal system, the core of the institutional infrastructure, must have been instituted; that its execution must be guaranteed; and that legal stability must have been established.

Establishing business corporations and business licensing system, etc. will be a focal point for corporations to “ participate in Playing Field. ”

The focal point of free activities in Playing Field is to form a legal system that secures contract fulfillment, fair competition, and corporate governance. Moreover, minimum restrictions on business activities, material purchase, personnel recruitment, and level of taxation and customs that do not retard corporate desires for activities in gaining profits are also important. To secure these protections, re-instituting and fair enforcement of a contract law, trade law, corporation law, business control laws, competition law (anti-monopoly law, unfair competition prevention law, etc.), law of intellectual property rights, taxation law, and so on are required.

Besides the law of guaranteeing “ Participation in Playing Field, ” a law on Exiting from Playing Field as well is required to promote venture spirit and risk taking activities. In other words, easy and reflective participation in and exit from Playing Filed is important. That is, re-instituting a legal system that corporations and corporate management can take risks is required and, therefore, a bankruptcy law must be formed from this viewpoint.

In order to secure free activities for corporations, “ currency ” in diverse fields must be guaranteed. Re-instituting the bankruptcy law will lead to promoting the “ currency of corporations. ”

Opening and closing rates of corporations can be a major factor to indicate economic dynamism from the viewpoint of “currency of corporations.” In order to enhance “currency of personnel,” a labor law must be re-instituted. Likewise, in order to enhance “currency of materials,” deregulation in domestic business and re-instituting import and export related laws are also becoming important. Moreover, re-instituting a competition law, law of intellectual property rights, and technical transfer law will lead to the enhancement of the “currency of technologies.” All of these re-institutions must be carried from the viewpoint of “currency of inter-nations.”

Based on the understanding the aforementioned, the following points must be considered for legal re-institution in transfer economy nations and developing nations that accept legal studies carried by JICA.

- 1) Before re-instituting a legal system, the orientation of the law is important as a prerequisite. Moreover, what is required to satisfy a sufficient condition is re-instituting enforcement laws. In this context, government's law enforcement ordinances play a very important role, sometimes more important than re-instituted laws, because they becomes the actual laws.
- 2) Laws that are considered necessary in accordance with the principles established in modern laws, such as the principle of legal accusation and penalty and the principle of legal taxation, laws whose necessity are clearly stated the constitution, the supreme canon, and other laws and regulations that have direct relationship with basic rights of people which should be instituted pursuant to the idea of the constitution are necessary to be instituted like other ordinary laws. However, depending on the purpose of the law, government ordinance and the like alone are enough, and effective rather than the legislation. Therefore, before engaging in legislation, the necessity, purpose, and possible enforcement system for the intended law must be sufficiently discussed. In other words, depending on the object to be regulated and the situation, a practical consideration will be needed for reservation of law.”
- 3) In the course of legislation, whether the content of the law is applicable to the development conditions of the economic and society of their own nation must be examined in detail. This is because a compelled legislation and a longer period for the legislation will make people less understood of the law, leading to difficulty in enforcing the law.
- 4) In case that laws of other nations are referred to, it is necessary to make detailed examination on whether referred laws are functioning well as well as on social, economic, and political systems together with their historical and cultural backgrounds. In this regard, the history of “Pandect Arguments” in Japan, which occurred once in the course of “succession of law” from Europe, can be a good example for your consideration.
- 5) In securing smooth enforcement of laws, it is natural to consider re-instituting a judicial system, together with the enforcement regulations and orders under enforcement ordinances.

[Reference]

[Reservation of law]

Is a part of the legal administrative principles, and indicates that the administrative right may not be executed without the legal foundation. This principle, however, does not mean that all of the administrative activities must have legal foundation. According to an existing popular view, an administrative activity needs the legal foundation only when it infringes the right of individuals or freedom. Therefore, no concrete legal foundation is required when the government administration engages in a beneficial activity for people. Practical administrative work also depends on this principle. (Glossary of Jurisprudence, published by Yuhikaku)

[Succession of law]

Means to accept laws of other nations. A law transferring nation is called a “law mother nation” and the nation that accepts laws from other nations is called a “law child nation,” and both nations are in the same legal lineage of system. The legal lineage is categorized into legislative succession and judicial succession, and whole succession and partial succession. For example, Japan once accepted laws of ancient China (called “ritsuryo seido” in Japanese), laws of Western nations since the Meiji Era, especially French laws and German laws, and American laws after the Second World War, such as the Constitution and the Criminal Procedure Code. (Glossary of Jurisprudence, published by Yuhikaku).

[Pandect arguments]

Is a controversy from 1889 through 1892 whether or not the Civil Code and Commercial Code be enforced. Since the Meiji government was in a hurry to make modern-style laws to amend treaties with other nations, it promulgated the Civil Code in 1890 after some adjustments on the French Civil Code based draft that was prepared by Boissonade, a French jurist and hired by then-government, and his Japanese followers. However, during the course of this drafting, many scholars, politicians, and leaders in society criticized the drafting. Some were for the drafting and were of the opinion that the draft should be enforced as had been scheduled. Others were against the drafting and were of the opinion that its enforcement should be postponed until adjusted to meet the situation of then Japan. The Commercial Code promulgated (1890, Law No. 32) was also involved in controversy, following the Civil Code, prerequisite of the Commercial Code. In November 1892, the Imperial Parliament of Japan decided to postpone the both codes. As a result, the Pandect Study Commission, headed by Chairman Hirobumi Ito, was formed to carry out adjustments (Glossary of Jurisprudence, published by Yuhikaku).

2-1-1-1 Formations and activities

(1) Corporation formation and registration (corporation law, commercial registration law)

In order to participate in Playing Field for business, you need to form some form of a legal body unless you participate as proprietorship. In most cases, you will form a company. A corporation is a judicial person, which is just granted to a social entity. A judicial person needs to satisfy the legal requirements. Japan and other nations with modern corporation law (commercial code) define the standard requirements to form a judicial entity; the status of a legal entity is granted when these are

observed and, conversely, not granted when these are not satisfied. This is called "observation of rules" and is popular in most nations.

Initially, licenses were issued for applications for joint-stock corporations. However, when it came in the latter of 19th century, the licensing system tended to retard the freedom of economic activities and against merging economic demand. Thus, nations transferred the system to the observation of rules, and at the same time, observation of rules was applied more strictly to prevent bad effects as the time passes.

An exception to the observation of rules is the businesses that need to protect general people (such as banking, security brokerage, insurance, investment trust, railroad, electricity, gas utilities, etc.). These businesses need business license according to the special law. Although such license is issued for operation theoretically and nothing to do with the formation of a company, the actual effect is very close to formation licensing.

Japan limits the businesses that are required to obtain operation license to those that need to protect general people as stated above. Although participation barrier at corporation formation stage is small in Japan, regulation at economic activity stage is causing a major controversy.

However, some of the nations in transformation stage, for example, Vietnam adopt the permission system for most of the businesses since in the past. This also leads actually to the licensing system for the formation of corporations, which posing a major barrier for those who desire to participate in businesses by forming new corporations. In other words, in order to promote active participation in the market by small and medium enterprises and to secure freedom of economic activities, deregulation of business licensing and establishing the observation of rules for the formation of corporation are minimum requirements.

For a corporation to obtain a judicial person status, the company must be registered. A corporation is formed when it is registered in a place where its principal office is located. In the observation of rules, at the final stage for formation procedure, the formation of a corporation is registered, to which a judicial person status is granted. The registration officer examines application papers only for formality whether they satisfy the observation of rules and does not carry out substantial examination.

The commercial registration system is indispensable for not only deciding to accept or deny the judicial person status of a corporation but also for publicly noticing the important matters of a corporation so that third parties intending to have trade relation with the corporation won't suffer unpredicted loss.

(2) Corporate governance (commercial code, corporation law)

Corporate governance is generally achieved when internal functions of a corporation check others in the corporation for appropriate management, or when shareholders, creditors, and other interested people of the corporation occasionally check corporate management, or when the force of

the capital market, etc. controls the corporate management.

Many of small and medium enterprises are managed by families, and most of their stocks are not offered to the public, thereby almost free from the influence of capital market. Thus, in the past, corporate governance is an issue that big businesses are involved, and therefore, most of small and medium enterprises have nothing to do with this matter. However, small and medium enterprises are more regulated than big businesses by market competition because they have almost no control over prices unlike big businesses. In addition, financial institutions, trade partners, and other interested organizations, and parent companies and other affiliated companies have also influence over small and medium enterprises for efficient management. Moreover, small and medium enterprises also have internal functions, such as board of directors, which is supposed to supervise its business operations and auditors who are supposed to audit the corporate accounting. Thus, it is essential for corporate activities that these functions for corporate governance are supported by re-instituting the corporation law, which should be enforced appropriately.

The commercial code can be divided into corporation law and commercial trade law. The field of commercial trade law accounts for the major part of the commercial code for most nations. On the other hand, corporation law varies very much from nation to nation. Actual applications of corporation law are widely different although you may not find much difference among provisions of corporations laws of different nations. For example, Japan introduced a revised corporation law in 1950, many of which were taken from American corporation law. However, the application of corporate governance is fairly different between Japan and USA. European Union has issued a directive to which corporation laws of member nations are supposed to be adjusted. However, actual application of the law would remain different among member nations although provisions are seemingly the same.

The joint-stock corporation law is stipulated, together with commercial activity law and maritime commercial law, as part of the Commercial Code in Japan. And the Commercial Code is applied to any joint-stock corporations regardless of the size of joint-stock corporations and public offering or no offering of their stocks. Some of the acceptor nations intend to re-institute a corporation law or an enterprise law, independently from commercial code, although they have already adopted civil laws. Another example is Thailand, which has re-instituted an independent corporation law for publicly held joint-stock corporations.

Based on the responsibility of employees and shareholders, Japan's Commercial Code classifies corporations into three types, namely "gomei gaisha," "goshi gaisha," and "joint-stock corporation" (Article 53, Commercial Code). Besides these, "yugen gaisha" (limited liability company) is also permitted in Japan according to the yugen gaisha law. Although "yugen gaisha" is not based on the Commercial Code, the company is included in corporations based on the Commercial Code when laws other than the Commercial Code are applicable (Article 89, Yugen Kaisha Law). When checking commercial codes and corporation laws of other nations, most of them have three types of corporations, namely, partnership, limited partnership, and limited liability

company, which almost correspond to Japan's " gomei gaisha, " " goshi gaisha, " and " kabushiki gaisha. " Japan 's Commercial Code (corporation law), enacted in 1899 based on the Germany 's corporation law, was substantially revised in 1950 to strengthen the shareholder's status and so on by making reference to American corporation law. Since then, a series of revisions has continued until today; the auditor's right was revised and strengthened and the corporation was banned from providing profit for fixers of stockholders' meetings in 1981; fundraising by preferred stock, etc. was revised in 1990; a suit system by stockholder representatives was revised in 1993; merger proceeding was simplified and a stock option system was introduced in 1997; obtaining treasury stock was deregulated in 1998; a stock exchange system was introduced in 1999; and a corporation division law was on schedule for legislation in 2000. However, such partial revisions are not enough to meet changing corporate environments, for example, increasingly internationalization, transfer of corporate management styles and accounting systems to Western systems. In response to these situations, the Ministry of Justice has decided to make a drastic revision of the corporation law of the Commercial Code for the first time in 50 years by year 2002.

It is obvious that many parts of Japan's Commercial Code no longer meet the present situation; for example, it is out of date that the Commercial Code categorizes large public companies having overseas offices and tiny stores of private company into one section of joint-stock corporation.

Thus, the following main points are on the agenda for revision.

- 1) Re-instituting a legal system for corporate governance
- 2) Corporate information disclosure system
- 3) Re-instituting fundraising methods
- 4) Reviewing the law of limited liability companies (" yugen gaisha ")

[Reference]

[EU Directive]

EU Directives are a legal system to bring closer the legal systems of the member nations by admitting legal differences among the member nations. Unlike Regulation, EU Directives are addressed only to the lawmaker of the member nations; an EU Directive is transformed into a domestic law by the lawmaker of the member nations. EU Directives are useful to eliminate barriers among member nations for market consolidation and are applied to corporation laws and taxation laws of member nations.

[EU's corporation law]

Under the EU Law, the term [corporation] is applied to not only joint-stock corporations but also to limited liability corporations and cooperatives. Paragraph 3 (g) of Article 54 stipulates that the Commission and the Board of Ministers are responsible for enforcing a provision that " a corporation shall arrange equal security required for the member nations to protect the benefits of the employees and third parties. " Therefore, at first, EU Directives are promulgated targeting individual fields to adjust domestic corporation laws of member nations to bring closer and

harmonize so that free corporate activities in the EU region will be secured. So far 13 EU Directives concerning corporation law have been issued (some of them are not yet approved by the Board of Ministers).

[Japan 's gomei gaisha, goshi gaisha, and yugen gaisha]

Most of the gomei gaish and goshi gaisha in Japan now suspend their operation, and a very few were formed after the Second World War. The reason is seemingly because Japan's gomei and goshi gaisha don't enjoy benefits from the taxation system. Conversely, Germany has still many gomei gaisha and goshi gaisha like USA has many partnerships and limited partnerships. This is seemingly because these companies enjoy benefits from the taxation system. In other words, the gomei gaisha and goshi gaisha in the German and American laws do not have judicial person statuses. Therefore, no corporate tax is imposed on gomei gaisha and goshi gaisha in Germany and the United States. All of their profit and loss belongs to the employees. Thus, gomei gaisha and goshi gaisha are used to eliminate double taxation and for tax avoidance as well. That is, when a gomei gaisha or goshi gaisha invests corporate funds in purchasing buildings and aircraft and other assets and when processing their depreciation costs as expenses, no profit but loss can be yielded. This method can be used for tax avoidance by individuals with large income. They usually sell gomei gaisha and goshi gaisha after years when capital gain is expected from selling them. This method is typical for Germans and Americans to use proprietorships, namely partnerships and limited liability companies (gomei gaisha and goshi gaisha).

Yugen gaisha fits for small and medium enterprises. However, this form has been used not so much because of different show-off among the status of corporate management and the employee. In order to enhance the use of the yugen gaisha system in Japan, study for legislating a more attractive yugen gaisha law is proposed instead of engaging in tighter control over yugen gaisha like joint-stock corporations (" Japan 's Corporation and Corporation Law, " by Kenjiro Egashira, 1993).

(3) Re-instituting a legal system for finance (collateral law)

The financing system is essential for corporations to satisfy the need for funds. In financing, an established collateral system is prerequisite. However, for most of the small and medium enterprises where corporate ownership and management are usually not separated and where the principle of shareholders' limited liability does not necessarily function, the personal collateral (guarantee) system by corporate management plays an important role. Nevertheless, however, to establish a material collateral system is extremely important. In this case, the collateral system should include stipulations that the provider of collateral is allowed to maintain continued usage revenues from the collateral object; that the public announcement method of the object must be established; and that the real estate mortgage system play the central role considering the fact that assessing the marketable value of the collateral object is easy.

In other words, unless the rights of real estate of an individuals and of a corporation are clarified and the real estate registration is established, instituting a corporate finance system is impossible or is extremely limited. Clarifying the legal rights and establishing the real estate registration system

are indispensable for promoting corporate activities.

Incidentally, 70% of the large Japanese corporations offer real estate owned by them as material collateral to get financed. In contrast, it is said that some 40% of the small and medium enterprises in Japan offer real estate owned by them and also real estate owned by corporate officers to get financed. While over half of large Japanese corporations do not offer personal guarantees to get financed, nearly 80% of small and medium enterprises in Japan are requested to offer a personal guarantee by the representative director, and 20% of small and medium enterprises are additionally requested to offer personal guarantees of corporate officers other than the representative director to get financed (Small and Medium Enterprises White Paper, fiscal 1999).

It must be noted that over-emphasizing the material collateral system will lead to difficulty for small and medium enterprises to get loans including in Japan. While needs for equipment fund and working capital by corporations, including small and medium enterprises, are becoming diverse, the material collateral system should not be over-emphasized. For this purpose, a financing system that incorporates material collateral and cash flow expected to yield in future from the business of the borrower should be established. In order to approve such expected cash flow as a payment source for loans, the corporate accounting system must be clarified and disclosed more. Instituting a legal system securing corporate activities is also essential.

[Reference]

[Separation of corporate ownership and management]

As is typically seen in a proprietorship like “goshi gaisha,” in a small sized corporation comprised by a small number of functional capitalists as employees, the employees as investors are in charge of the corporate management. Thus, corporate ownership and corporate management are identical. In contrast, a joint-stock corporation, or a typical material corporation, is supposed to raise large funds from a large number of people to form a large corporation. This type of corporation is comprised by non-functional shareholders that seek returns on their investment, and corporate management is carried out by directors as management specialists. Almost all of the employees of the corporation don't touch with corporate management.

As sated above, in the separation of corporate owners and management, investors as owners of a corporation are not directly involved in corporate management, and corporate management is separated from the corporate owners and instead is managed by management specialists. (Glossary of Jurisprudence, published by Yuhikaku)

[Principle of shareholder's limited liability]

This is a principle that a shareholder of a corporation is liable for the amount of stock he purchased as its upper limit of obligation and that no other obligations are borne by the shareholder. The shareholders of a corporation are not liable for the creditors to the corporation. The assets of the shareholders in the corporation can be appropriated to creditors. Thus, the shareholders' liabilities are limited to the corporate assets that they purchased in the form of

stock. In other words, a shareholder of a corporation takes indirect limited liability for the corporation.

The principle of shareholder's limited liability is the essence of the joint-stock corporation. Any resolutions made against this principle (such as obligations to distribution of loss and compensation of loss, and to additional investment by shareholders) can neither be stated in the articles of incorporation nor be made even at a general meeting of shareholders of the corporation. (Glossary of Jurisprudence, published by Yuhikaku)

(4) Re-instituting capital market

In order for corporations, especially small and medium enterprises, to pursue growth and make innovations of their management, they must leave excessive borrowing condition and try to enhance its equity capital ratio. In other words, they must change their loan system from indirect finance to direct finance. To realize this transformation of finance systems, a capital market must be re-instituted so that small and medium enterprises can fundraise from this market easily.

In relation to this move, a new move was seen in Japan on November 11, 1999. That is, MOTHERS (Market Of The High-growth and Emerging Stocks), a new stock exchange market, was formed at the Tokyo Stock Exchange. Moreover, in cooperation with the Osaka Stock Exchange, NASDAQ (National Association of Securities Dealers Automated Quotations) Japan is scheduled to open in June 2000.

MOTHERS has features that corporations with high potential of growth in the next generations are allowed to get listed after examination, regardless of capital size, and that standard financial figures of its past corporate achievements and the number of elapsed years since establishment are not included in the examination for listing, and that examination for listing focuses on the business of the corporation and disclosure of risk information and data.

On March 21, 2000, the Osaka Stock Exchange Board made an outline of the NASDAQ JAPAN market system where corporations applying for being listed will be examined mainly based on their revenues and net assets and strict de-listing standard will be applied to listed corporations to secure currency of corporations.

MOTHERS and NASDAQ JAPAN are featured as having common characteristics that they mostly consider growth potentials and transparency (disclosure of corporate information), secure the currency of listed stocks, and don't stick to the past profitability and continuity. Among the nations the mission is scheduled to visit, Malaysia announced the formation of MESDAQ (Malaysia Exchange of Securities Dealing and Automated Quotation) in October 1997. The exchange started operation on April 30, 1999. The exchange is focusing on newly emerging high-tech corporations as listed companies. Based on the concept that "Rebirth and Development of Small and Medium Enterprises," Thailand formed MAI (Market for Alternative) in June 1999, a second market aiming to provide funds for small and medium enterprises.

(5) Promulgation of laws and ordinances

A modern nation is required to place statute law, such as regulations and ordinances, in a condition that people can know it. The promulgation procedures of laws and ordinances are also important to insure the predictability of the legal system. In old days, laws were not necessarily promulgated. For example, the Tokugawa Administration did not disclose “ Gosatasho-Hyakajyo ” (then criminal law) to the public and only “ bugyo ” (then judge) learned the criminal law to make judgements. Ordinary people did not know the content of the criminal law. A modern nation, however, needs to promulgate statute laws to govern the people. Unless laws are enacted and promulgated, the government cannot regulate the people. Thus, the criminal law based on the “ principle of legal accusation and penalty ” and the taxation law based on the “ principle of legal taxation ” (taxation on legal requirements, taxation on defined requirements), both of which are the basic principle of modern taxation system, are particularly important.

“ Promulgation ” means to announce law and ordinances, already enacted as national laws and ordinances, so that ordinary people can know their official text to make them effective. Since the post-war Japan has not enacted a law that defines the procedures for promulgation laws and ordinances, the matters related to promulgation, such as formats of promulgation text and publication on government gazettes, are customary carried out based on the system defined under the Meiji Constitution. The emperor is supposed to promulgate the revision of the Constitution, treaties, laws, and government ordinances (Article 7, Constitution), while other regulations and orders are promulgated by the enacting authorities.

Japan ’s Supreme Court Grand Bench decision, made on December 28, 1957, states that “ it is reasonable to state that laws and ordinances are promulgated through government gazettes after the official system of promulgation was abolished unless the government states otherwise by replacing government gazettes. ”

Most of the nations that the mission is scheduled to visit also customarily promulgate laws and ordinances through government gazettes. Moreover, some nations have the statement in their constitution while other nations have regulations of promulgation but its enforcement procedure is unclear or detailed, allowing the government to impose arbitrary or surprise taxation on corporations. Thus, to realize “ equality under law ” and to announce laws and ordinances through the entire people, the procedure for promulgation is important.

2-1-1-2 Currency

(1) Currency of corporations (bankruptcy law)

Instituting a legal system or a bankruptcy law to “ exit from Playing Field ” is important to make risk taking easier and promote the “ currency of corporations. ” As stated earlier, to institute a legal system to “ exit from Playing Field ” is also to make “ participation in Playing Field ” easier.

In this meaning, the corporation opening and closing rates could be said effective indexes to indicate economic dynamism. Japan’s corporation opening and closing rates are both lower than

those of the United States. Moreover, its corporation-opening rate has continued to exceed the corporation-closing rate, indicating active metabolism of corporations (Small and Medium Enterprises White Paper, fiscal 1999). Another white paper states that “ The United States has a social culture of more births and more deaths of corporations than Japan, and active inter-corporation competition produced from such metabolism is a source of economic dynamism in the United States ” (Small and Medium Enterprises White Paper, fiscal 1998).

In contrast, Japan has the following main features:

- 1) Lowering trend in corporation opening rate
- 2) The corporation opening rate has continued to lower than the closing rate
- 3) The opening and closing rates of smaller businesses have kept high

Since the bankruptcy law was re-instituted in the 1980s in the United States, fast procedures and assets preservation measures have led to minimum risks in case of business failure. Moreover, the family maintenance right has been protected to a certain range. These measures have begun to play an important role in providing opportunities for venture businesses. From the viewpoint of utilizing management resources, legal systems must be re-instituted not only for corporation liquidation but also for corporation resuscitation and reconstruction.

When seeing the situation in Japan, in reality there has been no legal bankrupt system that small and medium enterprises can use. Thus, most of their bankrupt cases seem to have been processed by personally. In other words, small and medium enterprises that are facing bankrupt cannot apply for necessary procedures until bankrupted, barring them from smooth exit from market and delaying in taking reconstruction procedures, thus resulting in no utilization of their management resources. Since corporate ownership and management are separated for most small and medium enterprises, the principle of shareholder's limited liability is in effect. Instead, most of their corporate liabilities are personally guaranteed by the management, reconstruction of their businesses, when bankrupt, is very difficult.

To solve these situations, the formation of an easy-to-use, simple, and speedy reconstruction procedure and an easy re-challenge system for failed businessmen are proposed. These proposals include the formation of a new reconstruction procedure and system that include the deregulation of application for bankrupt requirements, continuation of business by debtor, limitation of lien effect, etc., installments of advance payment for suit and court expenses, formation of a resuscitation procedure for the corporate management who personally guarantees corporate liabilities, and so on. (Final Report on Small- and Medium-Sized Enterprise Policies, May 1999)

Under the move mentioned above, the Japanese government enforced the Civil Regeneration Law effective on April 1, 2000, aiming to smooth bankrupt procedures for companies. At the same time,

the law will bar the degradation of assets following the bankruptcy and help to maintain employees for early reconstruction of the bankrupt company, and transfer the business operation without delay. Along with the enforcement of the Civil Regeneration Law, the Corporate Composition Law, enacted since 1923 and played a major role as the bankruptcy law for small and medium enterprises, has been discontinued. This new law will provide opportunities for Japanese companies to re-challenge after bankruptcy like in the United States.

(2) Currency of personnel (labor law, social security law) Corporation, especially management resources, such as management know-how and techniques, that are key elements for small and medium enterprises are usually embodied into corporate management and employees. Thus, maintaining qualified personnel for corporations, especially small and medium enterprises is essential. Specifically speaking, weaknesses for basic management control, such as corporate finance and quality control, often restrain business growth. Thus, small and medium enterprises need to strengthen their existing employees as well as recruit personnel from outside. For this purpose, they need to improve labor conditions so that qualified personnel can work for. At the same time, a labor market must be re-instituted so that workers can move smoothly among corporations. In other words, a system that secures the ~~✕~~currency of personnel “ must be established.

As a result, a legal system that promotes improvements of labor environment, enhancement of social welfare for employees, and the formation of neutral systems for retirement allowance and pension, all of which are relatively weak for small and medium enterprises, must be re-instituted to promote small and medium enterprises.

Incidentally, Japan has a law called the ~~✕~~Law Concerning Employment Management Improvement and Promotion for Securing Labor Force and Generating Good Employment Opportunities for Small and Medium Enterprises “ (Law No. 57, 1991)

(3) Currency of materials and services, etc. (transportation law, import and export law) Smooth provision of materials, services, and so on which are necessary for corporate activities is essential for business operation. In order to meet these requirements, a regulation controlling the distribution of materials, services, and so on is required at least. In particular, in modern society a corporation can hardly make a closed system where all materials and services, etc, are provided domestically. Thus, re-instituting a legal system that allows distribution of materials and services domestically and internationally as well as their deregulation are in strongly required. Since Japan is an island nation, imported and exported cargoes are transported by ship (marine transportation) and aircraft (air transportation), while continental nations use railways and trucks for international transportation, in addition to ships and aircraft.

For example, European Union, which aims to unite the markets in the region, has confirmed in a regional market white paper that it will ~~✕~~delimit flows of goods, abolish barriers against free transfer of services and capital, ask the member nations to legislate similar laws that allow the common market to function properly, form a united market in the region that allows to impose indirect taxes for the common market. “ For this end, the white paper clarifies the following three challenging

policies:

- 1) Eliminating physical barriers
- 2) Eliminating technical barriers
- 3) Eliminating financial barriers

Of the above three challenging policies, physical barriers indicate regulations and procedures that control flows of people and goods between national borders in the member nations. In particular, flows of goods still involve so-called non-customs barriers, such as inspection, medical inspection, document preparation, waiting time, even after customs is abolished. Thus, the regulation concerning national borders is posing a largest challenge. In the past, the following three measures were implemented.

- 1) Harmonization between goods classification and marking
- 2) Application of EU uniform customs tariffs
- 3) Unification of customs clearance papers

In the future, implementing common policies of transportation, especially road transportation will be required. Road transportation is also posing a challenging issue for Asia, especially for the Greater Mekong Sub-region (GMS). While continuing assisting road construction projects, ADB has begun to recognize the necessity of eliminating systematic barriers that disturb free trade and people's flows in the GMS, in order to make effective links such infrastructure with the development of the society and the economy.

The main barriers among national borders in the GMS are:

- 1) Except for a few cases, traveling to other nations by automobiles is generally banned. This requires additional expenses to transship cargoes.
- 2) It often takes a long time to transit cargoes over national borders
- 3) Non-simple procedures cause extra burdens on consignors
- 4) Passport issue is limited and the cost is expensive

In order to improve the above-mentioned situations, ADB decided to form a technical cooperation in 1997 to promote flows of goods and people the GMS, and published a report in September 1998 on Cross-Border Movement of Goods and People in the Greater Mekong Sub-region.

Efforts also have been made by ASEAN nations to promote international transportation and traffics

in the region. Of the six GMS member nations, five are members of ASEAN, where China is a full dialogue partner. Thus, coordination with ASEAN nations is also essential.

ASEAN formatted a first official draft called “Framework Agreement on Facilitation of Goods in Transit” to promote international distribution of goods in the region, which was announced in March 1998 at Phuket (Thailand) at the 2nd SEOM-STOM (The Joint Senior Economic Officials Meeting - Senior Transport Officials Meeting). This agreement was presented and approved at the 6th ASEAN summit held at Hanoi in December 1998.

Other relevant agreements are:

1) The Agreement on the Recognition of Domestic Driving Licenses by ASEAN Countries, Kuala Lumpur, 1985

2) The draft Agreement on the Recognition of Commercial Vehicle Inspection Certificates for Goods and Public Services Vehicles Issued by ASEAN Member Countries

3) The ASEAN Framework Agreement on Multi-model Transport

Among the nations that the mission is scheduled to visit, Laos needs such agreements most since it is a land-locked nation. However, Laos has just a ministerial order of uncompleted road traffic regulations. The nation needs to re-institute the present road traffic related laws by making up insufficient provisions and enact a well-defined law by arranging the present government ordinances and regulations. Moreover, Laos urgently needs to institute a vehicle inspection related law. At present, Laos has no equal right on transportation with neighboring Thailand and Vietnam. For example, vehicles owned by Laotians are not permitted to travel up to Bangkok Seaport. This brings additional costs to transportation from Laos and weakens international competitions of goods from Laos. In order to have equal reciprocity with other nations, Laos urgently needs to re-institute an international-level driving license system, vehicle inspection system, and so on.

(4) Currency of technologies (intellectual property right law, technological transfer law)

When seeing research and development activities made small and medium enterprises in Japan, their activity level is low on the average compared to that of large corporations. However, when seeing small individual corporations, there are many small and medium enterprises that are engaging in research and development activities. Also some of them are bringing efficient results by pouring their limited research and development resources. In general, the number of patents per R & D worker owned by corporation having 1000 employees or more far exceeds the number owned by small and medium enterprises. Again, however, there are small and medium enterprises that have many patents (Small and Medium Enterprises While Paper, fiscal 1999).

Thus, in order to promote technological developments and exchanges for greater utilization in society, instituting industrial property rights and other intellectual property rights is essential.

What is posing a great concern to Japan is intellectual property rights in relation to so-called supporting industry in Asian nations; many Japanese corporations advanced into Asian nations since the latter of the 1980s to make production bases and to promote international division of labor among these nations. These divisions of labor are bringing about the restructuring of Japanese industries and activating technological transfers to these nations.

Effects of technological transfers to Asian nations from Japan are:

- 1) Technological transfer is an effective means to make smooth advance into host nations and localization. Technological transfer will contribute to technological development of host nations and training of engineers. This will also contribute to the promotions of local industries, employment, increase of domestic production, and export.
- 2) Technological transfer will expand the technology and product markets for the donor corporation and create needs for its technologies.
- 3) Technological transfer will give royalty income to donor corporations, which is an effective means to recollect research and development costs for donor corporations.

In order to bring the above mentioned effects, it is essential that an intellectual property rights system must have been instituted in host nations where technologies will be transferred and investments will be made by donor nations.

The GATT Uruguay Round negotiation reached an agreement on December 15, 1993, when Trade-Related Aspects of Intellectual Property Rights (TRIPS) also reached an agreement. All of the member nations are obliged to ratify the agreements and make them effective; industrialized nations are obliged to enforce them within one year from the date that TRIPS took effective, and developing nations, within five years. In response to this move, many nations are enacting or revising the intellectual property right law. Incidentally, Japan has recently formed the Technology Licensing Organization (TLO). This aims to transfer technologies, patents, and other R & D results achieved by universities, etc. to private corporations in Japan. In other words, the organization aims to promote cooperation between academic circles and industries. The Law Concerning the Promotion of Technological Results by Universities, etc. to Private Businesses, " enacted in April 1998, has been enforced since October 1998. It is said that social systems to transfer patents and other results generated from technological research and development projects achieved by universities, etc. to businesses in the private sector have been instituted, contributing to vitalization of the information technology industry in the United States. However, in Japan, there have been a very few cases that new technologies invented by universities and other R & D institutions are transferred to businesses in the private sector. Thus, TLO is expected to play a major role in promoting joint research projects and licensing resultant patents, which will lead to exploration of new business areas by emerging venture businesses and enhancement of industrial technologies.

2-1-1-3 Competition

In order for market to function sufficiently, it is prerequisite that Level Playing Field must have been effectively instituted, namely fair competition conditions must have been secured. However, in reality, most of small and medium enterprises are extremely inferior in fund-raising and recruiting personnel to large corporations. It is also extremely difficult for small and medium corporations to keep their management know-how, technologies, data, and other software related management resources within the companies in their proprietary method. Procuring these management resources will be a heavy burden for Small and Medium Enterprises compared with large corporations.

In consideration of the situations mentioned above, Japan's policies for small and medium enterprises have emphasized coordination and regulations aspects from the viewpoints of making up insufficient aspects of market function and instituting competition conditions in the market. Thus, the Japanese government has directly and widely practiced to intervene in the market, such as non-application of the Antimonopoly Law to small corporations, and the allocation and coordination of business areas between small corporations and large corporations.

However, business environments around small and medium enterprises have been changing. Due to increase in diverse small and medium enterprises, globalization of economies, and other factors, the number of business areas where corporation size plays no dominant factor in the market competition is increasing. In response to these changes, "Study Report on Small and Medium Enterprises Policies" (May, 1999) proposes reviewing and examining whether current policies of compensating the disadvantages of weak small and medium enterprises based on a unified precondition that small and medium enterprises are economically weak are reasonable and effective. The report further states that examining current policies should be examined from the viewpoints that "respect for market principle" and "economic activities must be free in principle and social regulation must be limited at minimum necessary level" and that "securing opportunities for participating in the market" and "securing fair trade conditions" should be the basic principles. Concerning "securing fair trade conditions" mentioned above, the report states that deregulation itself will bring new business opportunities for small and medium enterprises; that securing fair competition order after deregulated market should be emphasized more than ever; that "strict and quick measures against unfair trade such as granting unfair benefits to small and medium enterprises" are necessary; and that the Antimonopoly Law and the Law of Payment to Subcontractors must be strictly observed in order to secure fair trade conditions.

Finally, when categorizing the ten nations that the mission studied, the nations where the Civil Law is applied are Poland, Bulgaria, Indonesia, Thailand, Cambodia, Laos, and Vietnam (7 nations) while the nations where Common Law is applied are Malaysia, Philippines, and Bangladesh (3 nations). Except for Cambodia, the ten nations have already instituted respective civil code, commercial code, and other basic laws. The challenging subject is to improve their content and strengthen the enforcement systems.

These ten nations can be divided into the Eastern transformation economic region, initial ASEAN member nations, Indochina nations, and other, and their respective regional characteristics are as follows:

The Eastern transformation economic region (Poland, Bulgaria) is preparing for joining the EU in the near future by instituting EU standard laws.

The initial ASEAN member nations (Indonesia, Thailand, Malaysia, Philippines) have already instituted the basic laws. After the Asian economic crisis, however, Indonesia and Thailand are formulating a bankruptcy law, an antimonopoly law, and other economic regulation laws under the guidance of World Bank, IMF, and other international institutions.

The Indochina nations (Cambodia, Laos, Vietnam) are under transformation to market economy, and basic laws are not yet instituted in these nations.

The other nation (Bangladesh) has inherited the legal system of Britain, the former suzerain state, to a substantial level.

Cambodia has adopted a fixed policy of depending on the Common Law for its commercial code while a civil law and a civil procedure law are being drafted by JICA experts based on the Civil Law (note, however, that the Civil Code was enacted in the colonial regime in 1920). The United States and many other Common Law adopted nations have enacted corporation laws and commercial trade laws in statute. Although the difference between the Civil Law and Common Law is becoming smaller, their enforcement is feared to pose some problems.

The legal principles that “special laws precede ordinary laws” and that “the latter law abolishes the former law” don’t function in Vietnam. Thus, the older regulations based on the socialist system are still effective although the modern civil code and the commercial code have been instituted.

Thailand has incorporated the civil code and the commercial code into the Civil and Commercial Code, where the regulation of the private company is instituted. Another regulation for the publicly held corporation is instituted in the Public Limited Companies Act.

Concerning labor laws, even in Cambodia where the civil code and the commercial code are not yet instituted, many kinds of decrees relating to labor, such as banning slave labor, have been promulgated since the end of the 19th century. The ILO has also been emphasizing and guiding the institution of labor laws in many nations.

Concerning the patent law, trademark law, industrial design law, copyright law, and other so-called intellectual property rights, the Trade Related Aspects of Intellectual Property Rights (TRIPS) came effective in January 1995. As a result, the advanced nations are obliged to enforce the treaty by

January 1996; the developing nations and the former communist nations, by January 2000; and leased developing nations, by January 2006. To meet the deadline, nations are revising or re-instituting the relevant laws.

However, Poland rejected the drafted trade law with collateral, which was proposed by World Bank based on Volume 9 of the Uniform Commercial Code of the United States because the drafted law didn't meet the actual trade and legal tradition of Poland. As is seen in this example, it is not always easy for many of developing nations and transforming nations to enact laws, especially those laws reflecting their history, culture, politics, economy, and social backgrounds.

In Bulgaria, where a certain level of legal system has been instituted, not all of the laws and ordinances enacted meet the current situations because of radical changes in economic conditions, leading to repeated revisions. Indonesia and Thailand, where the bankruptcy law are revised in the guidance of IMF, are expected to have little hope for enforcing the law. In particular, Thailand is again revising the revised bankruptcy law.

[Reference]

[Civil law]

Has been originated from the Roman Law, and includes the laws under the influence or succession from the Roman Law, now being enacted in many European nations. The Civil Law is featured as statute. The term " Civil Law " is also used as the " civil code, " which has a broader meaning than the " Civil Code " of Japan when used for the nations other than those Civil Law is applied.

[Common law]

Angle-American Laws, indicating the entire Anglo-American laws including case laws and statute in broader meaning. However, when the term " Common Law " is used in Britain and the United States, it usually indicates customary laws accumulated in the form of case laws unlike the statute enacted by the Parliament and Congress.

[Uniform commercial code (UCC)]

Has been made for the purpose of modernizing and unifying the commercial trade laws in all different states in America. The code is adopted as a state law by all states now. Unlike the Commercial Code in the nations that adopt the Civil Law, the UCC defines " all of the aspects from beginning to end " in trade. The UCC has aspects similar to Japan's Civil Code and Commercial Code except for the Corporation Law. The Model Business Corporation Act has been made for different states to enact a respective corporation law.

2-1-2 Taxation and accounting system

2-1-2-1 Accounting system

The business entity that runs operation and is irrelevant to the classification of whether it is a small- or medium-sized enterprise or large corporation has prepared a corporate accounting report in focus of financial activities that accompany transfer of funds. The report provides important management information as the result of the business entity's activities. In modern economic society worldwide including Japan, double-entry bookkeeping is widely accepted as a social agreement to prepare financial statements.

Japan and many nations institute the accounting system as a law or under the authority of the business world or of the association of certified public accountants. The national taxation system, which is the financial base for the government, also seeks corporate income as taxable basis on the profits of the corporation in respect for the financial report system of corporation. Although purposes of preparing financial reports are different by the government (nation) and the corporation (management and shareholder), the both see the surplus after deducting the costs from the revenue is decisively important.

As mentioned above, to make the corporate accounting report reliable, the government institutes the corporate accounting standards that the corporations shall abide by in calculating financial conditions. However, if such accounting standards are insufficient, the precise financial conditions and management performances of the corporation are not assessable. Therefore, revisions and unification of corporate accounting systems are urgent both for the sound growth of the corporation and for benefit of the society. The uniform accounting system will also contribute to the introduction of foreign capitals into the nation, streamlining corporations, fair taxation, democratization of securities investment, promotion of fair industrial finance, and other reasonable economic solutions. Moreover, the uniform accounting system will give the scientific base for democratic and sound development of national economy.

Many of small and medium enterprises often encounter difficulties (insufficient fund and personnel), even though they want to incorporate the accounting report system. Though the accounting standards applied is the same for large corporations and for small and medium enterprises, special consideration is needed in reality. For example, Japan's tax offices pay respect to financial statements made pursuant to double-entry bookkeeping. When small companies prepare a financial report pursuant to single-entry bookkeeping, however, tax offices have been trying to make the most of the report for tax examination before denying the reliability of the report. The tax office in Japan accepts a small company makes the cost accounting at projected prices rather than seeking the more precise cost accounting, which is also accepted in commercial manufacturing bookkeeping. Some developing nations still have the accounting system and taxation system imposed by advanced nations during the colonial time. As a result, many of not only advanced nations but also developing nations have begun to adopt the recent international accounting standards, to which many different national accounting standards are coming closer. However, when the international accounting standards is actually applied to small and medium enterprises in developing nations, many of them

encounter difficulty in adjusting to the standards, unlike large corporations in far advanced nations like the United States.

As time passes by, however, informatization is spreading over small and medium enterprises in developing nations, including accounting software tools that are inexpensive and enable precise accounting processing. Thus, in near future, any small and medium enterprises are expected to prepare precise accounting reports. At present, large corporations and small and medium enterprises are different in their capabilities of financial management, and many accounting reports prepared by small and medium enterprises are less reliable. In the future, however, this problem will be solved earlier than expected. Since this seems to be depending on what incentives are proposed to small and medium enterprises in introducing the international accounting standards, the fundamental causes that they tend to avoid the introduction must be clarified.

To compare the international accounting standards with different national accounting standards (especially, those around the small and medium enterprises), it is wise to pick up different points rather than comparing all of accounting points one by one, namely (1) inventory, (2) consolidated financial statements, (3) depreciation, (4) inflation accounting, (5) cash flow statement, (6) research and development expenses, (7) accounting of corporate tax, etc. , (8) tangible fixed assets, (9) lease accounting, and (10) cost with retirement allowances must be examined to find differences. Other accounting points, such as (1) disclosure of accounting policies, (2) information to be disclosed, (3) important errors and changes of accounting policies, (4) contingency and subsequent events, (5) engineering work contract, (6) report by financial segments, (7) revenues recognition, (8) government subsidies, (9) change of foreign currency exchange, (10) borrowing rate, (11) special interests, (12) investment (including in financial products) accounting, (13) banking, etc., and (14) income per share are not closely related to daily accounting work for small and medium enterprises, or are purely matters of preparing accounting reports, and therefore not detailed in this report.

[Reference]

[Double-entry bookkeeping]

Continues to record all events that decrease or increase assets or change capital, based on which assets and profit or loss are systematically calculated. The bookkeeping that lacks of any of the above mentioned features is called single-entry bookkeeping. The term “ double-entry bookkeeping ” derives from the recording format (credits and debts recording).

[Financial statements]

Is the basic and systematic accounting report where corporate activities centering on management performances and changes of financial position in a fixed period are disclosed for the people concerned. In particular, a balance sheet and a statement of profit (loss) are called basic financial statements. Along with international harmonization of accounting standards in recent years, the cash-flow statement is being positioned as a third basic financial statement.

[Accounting standards]

Is the guideline used to guide corporate accounting practices and interpret accounting practices to achieve accounting purposes. In general, accounting standards is almost compatible with “ accounting principles. ” In other words, accounting standards or accounting principles mean a social norm that defines the rules and procedures related to calculation, evaluation, and disclosure of accounting. In recent years, by considering Anglo-American accounting standards and moves to international accounting standards, Japan has been revising its accounting standards in pursue of international harmonization in response to changing economic and international environments around accounting.

[Single-entry bookkeeping]

Bookkeeping is divided into single-entry bookkeeping and double-entry bookkeeping, based on the structural format. However, single-entry bookkeeping is hardly defined but often as the bookkeeping other than double-entry bookkeeping. For example, a petty cash book and a household account book are, respectively, a single-entry bookkeeping that usually records monetary balances alone. Therefore, a single-entry bookkeeping has never developed to a double-entry bookkeeping historically. However, it would be wrong to think that a single-entry bookkeeping means an out-of-date bookkeeping.

[Cost accounting system]

Is a system where cost accounting achieves the preparation of financial statements, cost control, budget preparation, budget control, and other similar purposes and where cost accounting is systematically linked with the financial accounting mechanism to form a continued calculation system. The cost accounting system is different from a special cost study that is partially carried from time to time outside the financial accounting framework.

[International accounting standards]

Is accounting standards where opinions by individual themes that are integrated and announced by the International Accounting Standards Committee. The International Accounting Standards Committee is formed by the associations of accountants of Australia, Canada, France, Germany, Japan, Mexico, Holland, Britain, Ireland, and the United States. The committee is configured by the private sector that comprises many professional accountant bodies. The purposes of the International Accounting Standards Committee is to prepare and announce international accounting standards that are harmonized and uniformed internationally, and to promote financial statements prepared based on the standards to be approved and observed by the international community.

2-1-2-2 Taxation law (corporation tax, income tax, customs, value-added tax, etc.)

Japan 's taxation has prepared many taxation system environments for small and medium enterprises. For example, besides income deduction, the full-timer business salary (deduction) system and the reduction of residence tax and business tax in local taxes are applied to proprietorships. Moreover, for small and medium enterprises capitalized at **¥**100 million or less,

corporation tax is reduced to 22% from 30% for the portion of annual income of **18** million or less, and tax on the reserves of a family corporation is deducted. Besides these beneficial measures, special measures are applied to small and medium enterprises to appropriate the reserve for doubtful account and to reduce the corporation residence tax equal allotment.

Furthermore, a number of special measures are applied to small and medium enterprises to reduce their financial burdens. These measures include beneficial taxation systems in areas such as inheritance tax for business succession, and special measures on consumption tax, capital investment and research and experiment promotion tax, and energy supply and demand restructuring investment promotion tax.

On the other hand, there are a very few advanced nations which take beneficial taxation measures for small and medium enterprises (in Germany small and medium enterprises are allowed to appropriate additional depreciation when they acquire fixed assets; in the United States, Britain, and other nations, progressive taxation rates are applied to taxable incomes of small and medium enterprises.) The reason that no beneficial taxation is offered to small and medium enterprises in these nations is because they are entitled to receive fund allowance, technical grants, import and export promotions, and other direct industrial assistance measures, and in the first place taxation is regarded as a system that any person who has income (profit) or assets is obliged to bear a certain burden for the construction, development, and maintenance of society.

On the other hand, not all developing nations have instituted the taxation system to be able to cover financial expenditures by the government. If taxation continues to lower financial expenditures by the government, the alternative is to borrow funds from other nations and eventually invite accumulated debts problem; or to issue government bonds in exchange of borrowings from the central bank or from financial institutions in the private sector and to increase money supply that will bring about inflation. Many least developing nations still have the customs system instituted in the colonial time to cover financial expenditures by the government. In the first place, the amount of corporation tax collected from small and medium enterprises is extremely small or cannot be taxed. As a result, the government tends to depend on withholding tax, and as time passes by, the government is expected to increasingly depend on commodity taxes mainly on liquors, tobaccos, and automobile fuels, sales tax, and value-added tax. Such examples are seen in Mexico and Indonesia in the 1980s where the reduction of investment promotion tax becomes ineffective because of so many purposes. These cases have posed a doubt on the beneficial taxation systems for small and medium enterprises.

In reforming the taxation system, at least the following six selections must be examined.

- 1) To reform the taxation system or the tax administration or both
- 2) To reform the entire or partial taxation system
- 3) To increase tax revenues or to be neutral or decrease in tax revenues

- 4) To be neutral or fair in income reallocation
- 5) To be neutral or intervene in economic (industry) policy
- 6) To take simultaneous, or step-by-step, or continuous measures

The following conclusions can be drawn from the past experiences.

- 1) A too hasty reform will fail.
- 2) Reform should target the entire taxation system including tax administration.
- 3) Simplification and lowering tax rates are linked with each other.
- 4) Deficit taxation will lead to tax reform failure.
- 5) Taxation reform centering on indirect taxes will succeed.
- 6) Carrying out tax administration is decisively important.

2-1-3 Promotion of small and medium enterprises

The common points that are observed in policies for small and medium enterprise promotion in Japan and the researched nations are:

- 1) Strengthening corporate management base:
Small and medium enterprises must have a strong management base.
- 2) Responding to market changes:
To respond to changing market environments and structure
- 3) Assisting small-scale businesses:
To provide measures for the weak, including for unemployment and region vitalization, or to form a social safety net

Concerning (1) above, providing management diagnosis, financial assistance, vocational training, etc. for small and medium enterprises is expected to strengthen their corporate management base so that they can overcome problems arising from their management environments, solve challenging subjects, and survive in free market competition. In this regard, an interesting idea is emerging from the viewpoint of economics that balancing among and strengthening the four elements, namely finance, customer and market, operation process, and learning and growth for small and medium enterprises (Balance Score Card). As shown in Figure, Balance Score Card and Small and Medium Enterprises Policy Elements, “ financial measures and legislative regulations concerning (1), (2), and (3) mentioned later are linked closely with these corporate management elements. Thus, the government intends to strengthen and guide the corporate management elements to promote the growth of small and medium enterprises, utilizing these policies or legal system as tools.

Concerning (2) above, as a whole, measures should be taken to guide transformation to market economy from planned economy in the amid of changing free economy market. For example, since globalization is spreading over transformation economy nations and long-standing free economy nations as well, the government needs to guide small and medium enterprises engaging in IT and other advanced areas for their sound growth. As people tend to misunderstand the content of (2), it is a common recognition that changes in industrial structures should take place through free competition among corporations.

It is still controversial whether to speed up industrial measures and whether to take active industrial measures to deter structural distortions that tend to happen in the course of economic changes.

(1) Entire legal system, economy, society and policy framework around small and medium enterprise promotion
The following framework is prepared to compare the institution of legal systems for small and medium enterprises among researched nations (Bulgaria, Poland, Philippines, Cambodia, Thailand, Laos, Bangladesh, Malaysia, Indonesia, Vietnam) and Japan.

In other words, as shown in Figure, *Relation of Legal System and Policy for Small and Medium Enterprise Promotion*, “ the Small and Medium Enterprise Basic Law is instituted as the base for small and medium enterprise promotion, and relevant legal systems are instituted to supplement the law. There are two factors that affect this framework. One is influences from national programs (industrial policy, social policy, etc.), which are carried out within the framework of legal system grouping for small and medium enterprise promotion. National programs and industrial programs are usually linked to regional development programs and local small and medium enterprise promotion, and furthermore, union organizing measures centering on manual industry for small and medium enterprise promotion.

The other factor is influences affecting within the economic system or economic activities within the system. An example is that the weak structure in the financial industry cannot provide effective lending for small and medium enterprises. Or, another example of influences is that a policy financial institution diminishes due to financial restructuring. On the other hand, there are cases that micro finance is provided for small and medium enterprises by NGOs and other organizations.

The commercial code and the criminal law are found as the fundamental social systems, on which the legal system for small and medium enterprises are established. The Small and Medium Enterprise Basic Law cannot exist without these fundamental social systems. Disputes in commercial transactions are usually handled within the commercial code and other laws within the general legal framework.

(2) Overview of legal framework around small and medium enterprise promotion

Table, *Legal Systems on Small and Medium Enterprise Promotion by Nations*, “ indicates a

comparison between Japan and the ten nations on small and medium enterprise promotion.

For comparative reference, Japan's legal system on small and medium enterprises is set as the framework for other similar legal systems in the other nations. You can check whether similar legal systems are instituted or not by filling items; when no corresponding item is found in Japan's framework, the item can be regarded as an extension of the legal system in question, and a new item is added to Japan's framework accordingly.

Based on (1) the Small and Medium Enterprise Basic Law, supporting legal systems or relating legal systems are classified into three groups, namely (2) strengthening corporate management base, (3) assisting structural changes, and (4) assisting small-scale businesses.

In promoting small and medium enterprises, their corporate management base must be strengthened. "Policies for strengthening corporate management base" for small and medium enterprises in (2) include financial measures, taxation measures, organization measures, fair trade promotion measures, coordination measures by business fields, demand securing measures from public offices, and bankruptcy avoidance measures.

After forming strong corporate bases, the structure of small and medium enterprises by industrial segments need to be changed into a more flexible structure. The above (3) "assisting structural changes" includes corporate management innovation assistance measures, assistance measures to new business, etc. technical capability assistance measures, plenitude in know-how-oriented management resources, informatization measures, measures for high mechanization, regional small and medium enterprise measures, central city vitalization measures, logistics streamlining measures, labor measures, energy and environment measures, and internationalization measures.

The above (4) "assisting small-scale businesses" concerns regulations for small-scale business measures. The reason why small-scale businesses are separated from small and medium enterprises is found in the difference in implementing measures; measures for small-scale businesses aim to assist them for co-existence and to relieve the weak whereas measures for small and medium enterprise promotion aim to assist them to overcome in free competition market for greater expansion so that they will grow to large corporations by their efforts. This classification is almost commonly shared not only by the Japanese government but also by World Bank, ADB, European Development Bank, and other international donor organizations.

Although measures for small and medium enterprise promotion by the Japanese government and by international donor organizations are different in detailed areas, they share common views that both small and medium enterprises and large corporations should compete for survival in free market under market principle and that donors should assist small-scale businesses from the viewpoint of protecting the weak for their survival.

World Bank, ADB, European Development Bank, etc. don't accept the view that small and medium enterprises should be protected from large corporations and emphasize that both types of corporations should have the same start line for free competition. On the contrary, the Japanese

government is of the opinion that small and medium enterprises should be protected from large corporations at the beginning until they will be gradually accustomed to enter into completely free competition and that regulations and measures should be taken accordingly.

There seem two types of industrial models in promoting small and medium enterprises; one is an industrial model, which is found in Ohta-ku of Tokyo where high-tech type small and medium enterprises are linked to each other through a network and in Taiwan, and the other is Japanese type industrial model where heavy industry corporations, multinational conglomerates, and small and medium enterprises in supporting industry are linked to make organic cooperation among them.

Concerning the Small and Medium Enterprise Promotion Law as the key for promoting small and medium enterprises, its existence does not automatically guarantee the promotion of small and medium enterprises when you see cases happened in Philippines and Indonesia. Instead, Malaysia has showed an example that a good combination of relevant laws and regulations can effectively promote small and medium enterprises even with no Small and Medium Enterprise Basic Law enacted.

(3) Definition of small and medium enterprise

The definitions of small and medium enterprises are tabled in the ~~✕~~Definitions of Small and Medium Enterprises. “ Capital and sales (or) number of employees or both are used to define small and medium enterprises by Japan and the ten nations. More specifically, although their sub-classifications of small and medium enterprises are largely different depending on their economic conditions, however, the definition of a small-scale business is mostly defined as a company with 10 employees or less; small-sized enterprise, with 100 employees or less; and medium-sized enterprise, with 500 employees or less. When seeing from the viewpoint of corporate management organization, a company with 10 employees or less can be operated by a family with relatives or friends. This is so-called a “ family business. ” A company with 100 employees or so needs a sound organization to operate the company. A company with 500 employees or so needs a clear organization where the power of the corporate management is subdivided and specialized based on defined management rules. These classifications are also validated from the result of study of organizations.

Besides the number of employees, some nations use the amounts of sales and capital to classify companies. These elements are often used to draw a line when deciding whether or not to provide beneficial loans. However, the definitions of companies applying these elements are largely different from nation to nation. The definitions of companies by applying GDP per capita in dollar are also largely different. Furthermore, what makes the company definitions more complex is Malaysia and Indonesia, where real estate such as land and building is not counted as part of capital of the corporation although the amount of capital has been adopted as the classification reference. This causes practical difference in the definition of companies. Thus, these elements are used only as a reference for comparison in this report.

Figure: "Relationship Between Legal Systems and Policies Around Small and Medium Enterprise Promotion"

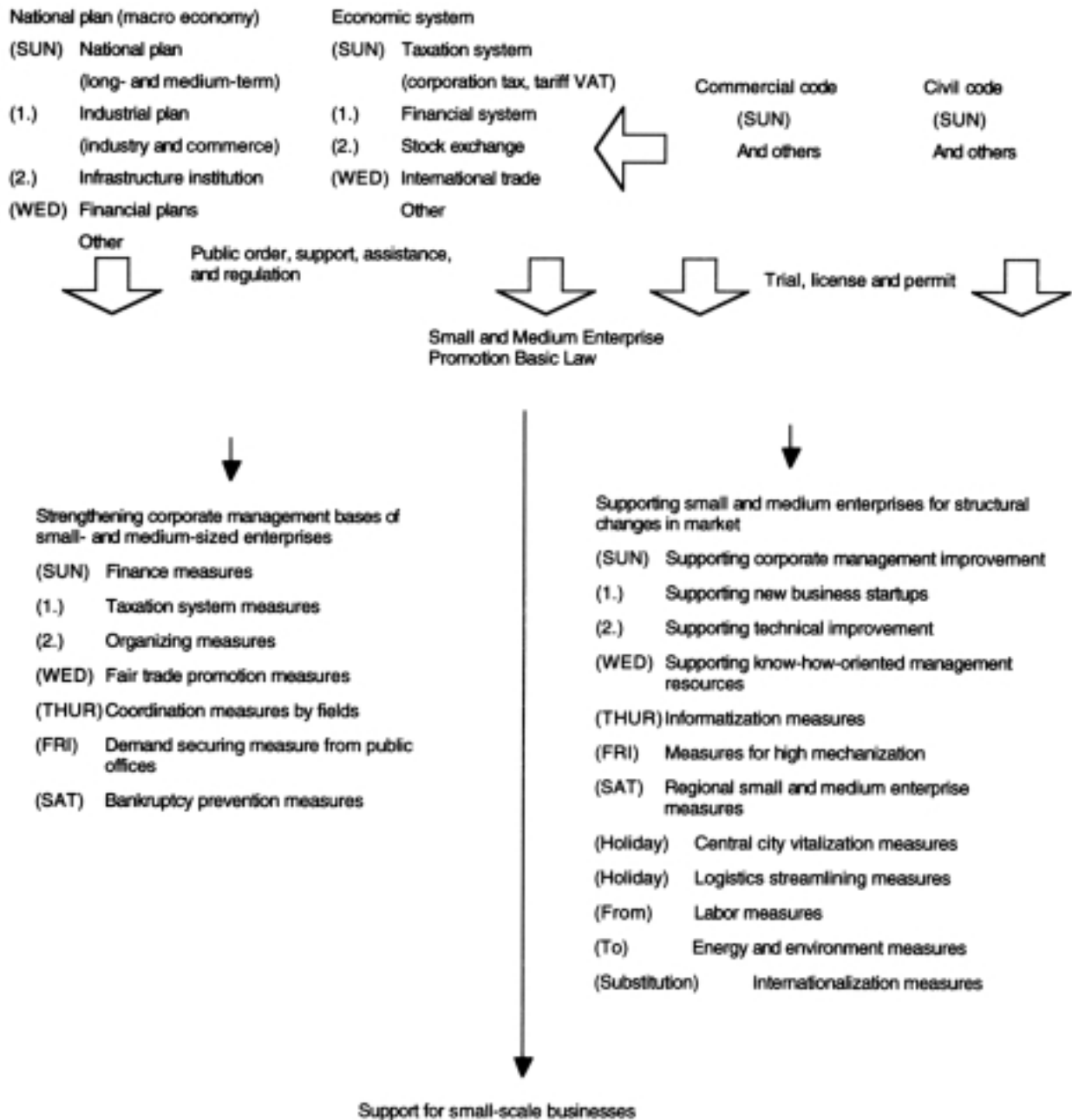


Figure: "Balance Score Card and Elements of Small and Medium Enterprise Policies"

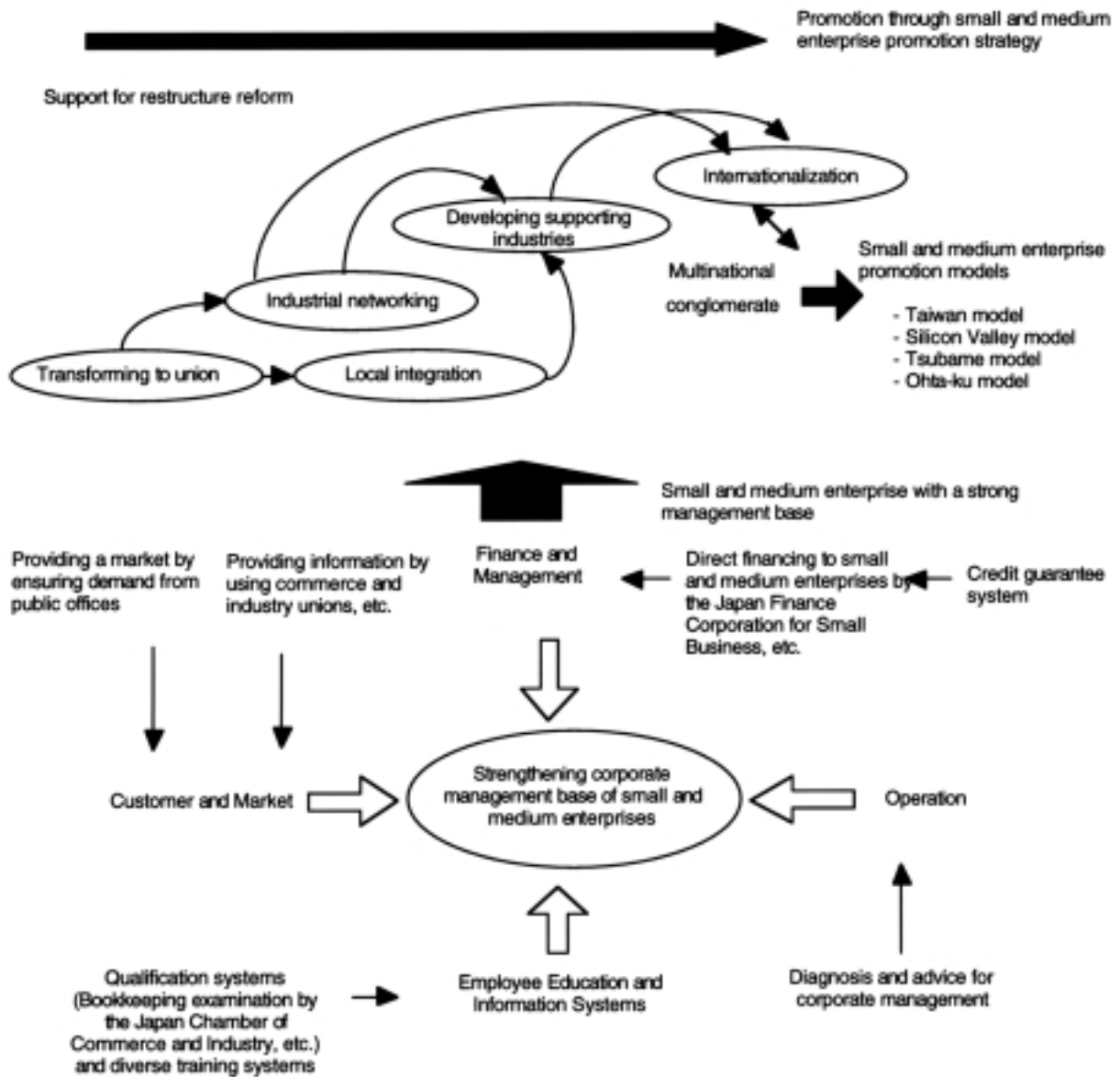


Table: Legal Systems on Small and Medium Enterprise Promotion by Nations

Comparing item	Poland	Bulgaria	Indonesia	Malaysia	Philippine	Thailand	Cambodia	Laos	Vietnam	Bangladesh
(1) Small and Medium Enterprise Promotion Basic Law	×	○	○	×	○	⊙	×	×	⊙	×
(2) Strengthening corporate management bases of small and medium enterprises										
Financial measures	○	○	○	⊙	○	⊙	×	×	○	○
Taxation system measures	○	○	○	⊙	○	○	×	×	×	○
Organizing measures	○	○	○	⊙	⊙	○	○	○	○	○
Fair trade promotion measures	○	○	○	○	○	○	○	○	×	○
Coordination measures by business fields	×	○	○	○	○	○	×	×	×	○
Measures for ensuring demand from public offices	×	○	×	×	○	○	×	×	×	○
Bankruptcy prevention measures	○	○	○	○	○	○	○	○	×	○
(3) Supporting structural reforms										
Corporate management reform support measures	○	○	×	×	×	×	×	×	×	×
Support measures for new business startup, etc.	○	○	○	○	×	○	×	×	×	×
Technical capability improvement support measures	○	○	○	○	○	○	○	○	○	○
Plenty in know-how-oriented management resources	○	○	○	○	○	○	○	○	○	○
Informatization measures	○	○	○	○	○	○	×	×	×	○
Measures for high mechanization	○	○	○	○	○	○	×	×	×	○
Regional small and medium enterprise measures	○	○	○	○	○	○	○	○	○	○
Central city vitalization measures	○	○	×	○	×	×	×	×	×	×
Logistics streamlining measures	×	×	×	○	×	×	×	○	×	×
Labor measures	○									
Energy and environment measures	○	○	×	○	○	○	×	×	×	×
Internationalization measures	⊙	○	○	⊙	○	○	○	○	○	○
(4) Small-scale business measures	○	○	○	○	○	○	○	○	○	○

Table "Definitions of Small and Medium Enterprises"

Nation	Definition	Note
Japan	<ul style="list-style-type: none"> - Industry and mining-related industries: Corporation with 300 employees or less or capitalized at ¥100 million or less (however, a corporation with 1,000 employees or less or capitalized at ¥100 million or less for mining industry) - Wholesale: Corporation with 100 employees or less, or capitalized at ¥30 million or less. - Retailer and service industries: Corporation with 50 employees or less, or capitalized at ¥10 million or less. 	Small and Medium Enterprise Basic Law
Poland	<ul style="list-style-type: none"> - Small corporation: Less than 50 employees, and less than ECU7 million of profit or less than ECU5 million of total assets - Medium corporation: Less than 250 employees, and less than ECU40 million of profit or less than ECU27 million of total assets. 	"Economic Activity Law" defines Small and Medium Enterprises.
Bulgaria	<ul style="list-style-type: none"> - Small corporation: 50 employees or less, and less than BGL1 million of sales or BGL 0.8 million of fixed assets or less. - Medium corporation: 100 employees or less, and less than BGL3 million sales or BGL2.4 million or less of fixed assets. 	Small and Medium Enterprise Act
Indonesia	<ul style="list-style-type: none"> - Small corporation: Less than 200 million rupees of assets except for land and buildings. 	"The Law of the Republic of Indonesia Number 9 of the Year 1995 Concerning Small Business. The medium corporation is defined as the implementation rule in the Republic of Indonesia President Instruction Number 10, 1999.
Malaysia	<ul style="list-style-type: none"> - Small corporation: 50 employees or less, and annual sales not exceeding RM10 million. - Medium corporation: 51 to 150 employees and annual sales of RM 10 to 25 million. 	Official notice from the Ministry of International Trade and Industry
Philippines	<ul style="list-style-type: none"> - Small-scale business: Less than P1,500,000 of assets (excluding land, buildings, and equipment) - Small corporation: P1,500,001 to 15,000,000 of assets (same as above) - Medium corporation: P15,000,001 to 60,000,000 of assets (same as above) 	Magna Carta for Small Enterprises (R.A.6977)
Thailand	<ul style="list-style-type: none"> - Manufacturing : Bt200 million of assets and 200 employees or less. - Service industry : Same as above - Wholesale : Bt100 million of assets and 50 employees or less - Retailer: Bt50 million of assets and 30 employees or less 	According to "The Fundamental Frame of Master Plan of SMEs Development, 1999."
Cambodia	Companies with 50 employees or less is expediently treated as Small and Medium Enterprises.	No clear definition. The classification at left is by the Ministry of Industry.
Laos	<ul style="list-style-type: none"> - Large corporation: 100 employees or more - Medium corporation: 10 to 99 employees - Small corporation: 9 employees or less, and accounts for 95 % of the corporations. 	No clear definition. The statistic classification at left is by the Ministry of Industry and Handicraft.
Vietnam	<ul style="list-style-type: none"> - Small and medium corporation: Less than VND5 billion of capital or less than 200 employees 	Provisionally defined by the government in 1998.
Bangladesh	<ul style="list-style-type: none"> - Large corporation: 100 employees or more, or Tk300 million of capital or more. - Medium corporation: 50 to 99 employees or Tk100 million of capital or more, and less than Tk300 million. - Small corporation: Less than 50 employees or less than Tk100 million of capital. Cottage industry is not included. 	

2-1-3-1 Small and medium enterprise promotion related laws (Small and Medium Enterprise Basic Law)

As described earlier, legal systems of small and medium enterprise promotion enacted by other nations are analyzed based on Japan's legal systems as the reference framework for comparison.

According to this framework, Based on (1) the Small and Medium Enterprise Basic Law, supporting legal systems or relating legal systems are classified into three groups, namely (2) strengthening corporate management base, (3) assisting structural changes, and (4) assisting small-scale businesses.

The Small and Medium Enterprise Basic Law usually defines the small and medium enterprises, the government's framework for small and medium enterprise measures, measures for regional municipal corporations, and relations with relevant regulations. The basic law also clarifies the segments and role allotments for the government's promotion policies and for the promotion policies by other relevant bodies, and allows to create a framework of small and medium enterprises for bodies other than the government bodies and regional municipal corporations. Moreover, after relevant legal systems are systematized as tools for applying to small and medium enterprise promotion policies, the basic law becomes the foundation for such policies and tools, helping their easier enforcement.

As described earlier and indicated in cases happened in Philippines and Indonesia, the existence of the Small and Medium Enterprise Basic Law does not automatically guarantee the promotion of small and medium enterprises. As indicated in the case in Malaysia, even with no Small and Medium Enterprise Basic Law, a good combination of relevant regulations can lead to an effective promotion of small and medium enterprises.

Moreover, it should not be overlooked that the national economic situation and the government's leadership ability largely relate with small and medium enterprise policies. As is seen in Vietnam, in the first place, the number of corporations in the private sector is extremely small. Thus, the prior policy is to increase the number of small and medium enterprises rather than promoting them. On the contrary, Indonesia and Thailand have already many small and medium enterprises. Thus, the government's policies are emphasizing cultivation of growth-potential sub-sectors. In other words, leadership by the government to the private sector and to regional municipal corporations plays an important role in promoting intended policies.

In this meaning, the Small and Medium Enterprise Basic Law can be very useful so far as it can be effectively enforced by the government.

In the end, it should be remarked that small and medium enterprise promotion policies are usually separated from small-scale business policies.

Table "Small and Medium Enterprise Basic Law by Nations"

Country	Name of basic law	Main contents, and small-scale business measures, if any
Japan	Small and Medium Enterprise Basic Law (law No. 154)	<ul style="list-style-type: none"> - Government measures - Measures by regional public corporations - Raising the structure of small and medium enterprises - Revising disadvantages for business activities - Small corporation (measures for small-scale businesses are formulated) - Finance, taxation system, etc. - Government administration and bodies for small and medium enterprises
Poland	None	However, the framework for policies is determined by the "Government Policy Guidelines for Small and Medium Enterprises until 2002." (May 11, 1999). In addition, the "Economic Activity Law" defines small and medium enterprises.
Bulgaria	Small and Medium Enterprises Act	
Indonesia	The Law of the Republic of Indonesia Number 9 of the Year 1995, concerning Small Business	"The Law of the Republic of Indonesia Number 9 of the Year 1995, concerning Small Business" defines the small corporation only. "President Instruction Number 10, the Year 1999" defines the medium corporation.
Malaysia	None	
Philippines	Magna Carta for Small Enterprises (RA.6977)	States the definition and policy administration of small and medium enterprises, and how to ensure funds for financing small and medium enterprises.
Thailand	Small and Medium Enterprise Promotion Basic Law	Legislated in February 2000 right after on-site study
Cambodia	None	
Laos	None	
Vietnam	Under formulation	The master plan of the small and medium enterprise promotion defines an original draft.
Bangladesh	None	

2-1-3-2 Laws and policies for strengthening corporate management base of small and medium enterprises (finance, investment, bankruptcy prevention, etc.)

Concerning strengthening corporate management bases of small and medium enterprises, policy tools include the following regulations; (1) Finance measures; (2) Taxation system measures; (3) Organizing measures; (4) Fair trade promotion measures; (5) Coordination measures by fields; (6) Demand securing measures from public offices; and (7) Bankruptcy prevention measures.

(1) Finance measures can be subdivided into 1) Financing small and medium enterprises by financial institutions in the private sector; 2) Financing small and medium enterprises by the government, regional municipal corporations, etc.; 3) Credit interpolation system for smooth finance of funds in the private sector; and 4) Investment cultivation business. Concerning 1) above, shinkin banks (shinyo-kinko in Japanese) based on the Shinkin Bank Law (1951, Law No. 238) and credit unions (shinyo-kumiai in Japanese) based on the Law of Small and Medium Enterprises Including Cooperative Societies have been instituted by the Japanese government.

Concerning 2) above, the Japan Finance Corporation for Small Business, the People's Finance Corporation, Commerce and Industry Union Central Bank, Environment Sanitation Finance Corporation, and other policy financial institutions have been instituted. The source of this fund comes from financial investment/financing funds, etc.

Concerning 3) above, Japan has a second tier structure, where Credit Guarantee Corporation and Central Business Credit Insurance Public Corporation are instituted and credit risk conversion is finally guaranteed by the government. Unlike Japan, however, there are a few nations that credit risk for small and medium enterprises is formed as a financial mechanism. Even if the mechanism does exist, many nations, including Malaysia, don't guarantee credit risk conversion. Concerning 4) above, Small and Medium Enterprise Investment Cultivation Co., Ltd. has been established in Tokyo, Osaka, and Nagoya.

In recent years, corporations including Japanese companies tend to emphasize direct fund-raising from stock markets instead of financial institutions. In response to this move, some stock exchanges are relaxing listing standards, and others are preparing to set up a stock exchange for small and medium enterprises. By imitating NASDAQ (the National Association of Securities Dealers Automated Quotations) of USA, Malaysia and other nations are forming stock exchanges similar to NASDAQ which emphasizes small and medium high-tech enterprises. Indonesia is planning to transform the dull Surabaya Stock Exchange to a NASDAQ-like stock exchange.

In Japan, (2) taxation measures are subdivided into 1) measures targeting ordinary small and medium enterprises and 2) measures based on the specific laws that promote small and medium enterprise policies. The taxation measures for 1) above include a general measure that the income tax rate on the portion of annual income of **¥**8 million or less of an ordinary corporation capitalized at **¥**100 million or less is lowered to 22% from 30%. Moreover, special beneficial measures, including the appropriation of reserve for doubtful account and the reduction of corporation residence tax equal allotment are applied to small and medium enterprises.

Concerning 2) above, there are diverse special measures in Japan, such as the new technology embodiment investment promotion tax or the mechatro tax, to promote small and medium enterprises. Almost all nations have such beneficial taxes to promote and cultivate small and medium enterprises. For example, many nations, like Bangladesh, provide tax exempt or deduction measures for small and medium enterprises that engage in export related business.

The simple income-tax return system like blue return is also regarded as a tax measure to reduce personnel expenses.

In the past, the protection of domestic industries, especially the industries that the government desires to cultivate, was useful when appropriate taxation system was applied. In recent years, however, under the pressure from the WTO and other institutions for global free trade, protecting domestic industries by imposing customs on import goods and taking beneficial taxation for specific domestic industries are becoming increasingly not easy. Moreover, the government is facing mounting pressure to change policies for customs tariff elimination, which will eventually lead to the decrease of customs revenues for industrial promotion and appropriation to corporate subsidies.

In Japan, (3) organizing measures are subdivided into the union systems, guidance to unions, etc., and subsidies to union, etc. The union systems include 1) formation of unions and mutual assistance based on the Law of Cooperative Unions Including Small and Medium Enterprises, etc. (1949, Law No. 181), 2) Improvement and development of industries based on the Law Concerning the Organization of Small and Medium Enterprises (1957, Law No. 185), and 3) joint business and management, etc. in shopping street areas based on the Shopping Street Promotion Union Law (1962, Law No. 141). Based on the Law Concerning the Organization of Small and Medium Enterprise Bodies, competition unions, commerce and industry unions, and commerce and industry union associations have been established in Japan. Also some researched nations like Indonesia have been emphasizing the promotion of union systems as a government policy.

In Japan, guidance to unions, etc. includes the National Federation of Small Business Associations, which engages in the guidance of unions, personnel training, and studies and researches. There are many cases that the Central Chamber of Central Commerce and Industry guides the subordinate chambers of commerce and industry and trains personnel. Another example is Philippines where the Philippines Chamber of Commerce and Industry guides the union management of the subordinate Laguna City Chamber of Commerce and Industry and other regional chambers of commerce and industries. In Bangladesh, the Bangladesh Chamber of Commerce and Industry Association plays such roles.

Concerning (4) Fair trade promotion measures, the Subcontract Price Payment Delay Avoidance Law and the Construction Business Law, which are based on the Subcontracting Small and Medium Enterprise Promotion Law (1970, Law No. 145), are enacted to protect subcontract transactions. Also, in broader meaning, the Antimonopoly Law and the Unfair Price Competition Prohibition Law are included in fair trade promotion measures.

However, the protection of small and medium enterprises under subcontract transactions is based

on a unique Japanese business practices where detailed terms and conditions stated in a contract are not always strictly observed in the commercial transaction, unlike contract nations where all terms and conditions including countermeasures against foreseeable events are stated in a contract and therefore the protection of small and medium enterprises under subcontract transactions don't have much meaning.

In order to promote fair trade opportunities for business activities, (5) Coordination measures by fields are subdivided into 1) unfair competition avoidance measures, 2) measures to coordinate with large corporations, and 3) correction of unfair trade manners. Usually, coordination talks are held by the union members concerned at, for example, the chamber of commerce and industry. Under the permit given by the competent minister, the commerce and industry union in question may overcome the business depression caused by excess competition in the business circle by introducing stabilization measures. These measures are out of the Antimonopoly Law. Moreover, after consulting the Central Small and Medium Enterprises Stabilization Commission, the competent minister have the power to issue a business activity restriction order (stabilization order).

(6) Demand securing measures from public offices are deployed in accordance with the Law Concerning Securing Orders of Public Offices for Small and Medium Enterprises (1966, Law No.97), namely:

- 1) In concluding a contract of purchasing commodities, the government, public corporations (kosha), public business (kodan), and other public organizations are obliged to make efforts so that small and medium enterprises have more opportunities to participate in such transactions, while considering suitable budget spending.
- 2) In order to ensure such efforts and clarify the supporting measures for concluding purchase contracts, the government shall formulate annual policies for increasing opportunities for small and medium enterprises; the summary of the policies shall be announced.
- 3) In order to ensure the enforcement of these policies, ministers, chiefs, and heads of ministries and government agencies shall notify the Minister of International Trade and Industry of annual summaries of their purchase contracts and, after revising such reports, the Minister may request ministers, chiefs, and heads to take necessary measures.
- 4) The regional municipal corporations shall deploy measures in accordance with the government policies.

Concurring demand securing measures from public offices, similar measures are found in Bulgaria and Bangladesh, where a certain volume of market is secured for domestic corporations, especially small and medium enterprises from a perspective of protecting domestic industries.

(7) Bankruptcy prevention measures are subdivided into 1) the bankruptcy avoidance special consultation service at the Bankruptcy Avoidance (management stabilization) Special Consultation

Office, managed by major chamber of commerce and industries, prefecture-level chamber of commerce and industry associations, etc. , and 2) the serial bankruptcy avoidance service including the small and medium enterprises bankruptcy avoidance measure loan system by the Japan Finance Corporation for Small Business, the People's Finance Corporation, and so on.

Only a few nations, like Japan, have systems where bankruptcy avoidance consultation and the serial bankruptcy avoidance mechanism are built in the industry. In addition, Vietnam, Laos, and Cambodia in the Indochina peninsula and the former communist nations even don't have a bankruptcy law. In promoting small and medium enterprise measures, it is important to clarify bankruptcy process as a first step and to provide measures to avoid bankruptcy as the next step, as Japan has instituted such measures.

2-1-3-3 Laws and policies concerning structural changes of small and medium enterprises (technical policy, informatization, labor measures, environment, transformation economy promotion, etc.)

While "strengthening corporate management bases" involves in assistance and control of elements inside the corporate management environments to grow into a competitive corporation, legal control concerning structural changes involves in elements outside corporate management environments.

"Assisting structural changes," includes legal regulations as policy tools, such as (1) corporate management innovation assistance measures, (2) assistance measures to new business startups, etc., (3) technical capability improvement assistance measures, (4) plenitude in know-how-oriented management resources, (5) informatization measures, (6) measures for high mechanization, (7) regional small and medium enterprise measures, (8) central city vitalization measures, (9) logistics streamlining measures, (10) labor measures, (11) energy and environment measures, and (12) internationalization measures.

(1) Corporate management innovation assistance measures in Japan are based on the Small and Medium Enterprise Management Innovation Assistance Law (1999, Law No. 18), based on which finance, taxation, subsidies, and other assisting measures are implemented. Meanwhile such measures are focused on industrial development rather than Small and Medium Enterprises among the studied nations, as are seen in Malaysia, etc.

(2) Assistance measures to new business startups, etc. in Japan include providing subsidies, finance system, beneficial taxation, credit interpolation, special insurance of equipment credit insurance, subsidies of equipment modernization fund, etc. to venture businesses based on the Small and Medium Enterprise Creative Activity Promotion Law (1995, Law No. 47), New Business Law, Investment Business Limited Liability Union Law, and other relevant laws, Meanwhile, in some of the studied nations, like Philippines, new business startup, etc. is assisted by the venture capital system. As an idea of industrial policies in the past, the government, through government corporations, took the responsibility of starting up new businesses which have potential

to lead industries to change industrial structure in the desired direction. However, in recent years, such leadership has been taken by venture capitals in the private sector. Thus, the government has emphasized the cultivation of venture capitals.

(3) Technical capability improvement assistance measures in Japan include technical development, strengthening manufacturing base, technical training and guidance, etc., which are carried by the National Research Laboratory, Japan Small and Medium Enterprise Corporation, prefecture municipal corporations, etc. Meanwhile, many of the studied nations have set up technical centers and business centers to promote technical transfer.

(4) Plenitude in know-how-oriented management resources in Japan, aiming to improve the corporate management techniques for small and medium enterprises, include corporate management technique assistance and small and medium enterprise assistance network management business based on the Small and Medium Enterprise Guidance Law (1963, Law No. 147) in Japan. Moreover, prefecture municipal corporations carry out small and medium enterprise manager training and small and medium enterprise engineer training. Meanwhile, the chamber of commerce and industry in many of the studied nations carries out technical guidance and networking.

(5) Informatization measures, aiming to promote office automation and streamlining of small and medium enterprises, include the assistance of small and medium enterprise informatization by developing their business application programs and by developing their hardware and infrastructure equipment which support wide area link information networking business, etc. In broader meaning, the recent Y2K problem is also included in the informatization measures.

(6) Measures for high mechanization in Japan include modernization measures for specified industries, restructuring measures for specific industries, and new business area promotion measures, all of which are based on the Small and Medium Enterprise Modernization Promotion Law (1963, Law No. 64). The Japanese government also enacted the Temporary Measure Law for Textile Industry Restructuring Improvement (1967, Law No. 82) to restructure the textile industry for modernization. Meanwhile, the similar laws have been enacted in many of the studied nations, like Poland, where coal industry restructuring is carried accordingly. In most cases, however, these laws are used to coordinate and restructure depressed industries rather than their restructuring for modernization.

(7) Regional small and medium enterprise measures in Japan include the activation of regional industry promotion by gathering component stock sites and local industries based on the Regional Industry Integration and Activation Law (1997, Law No. 28).

Meanwhile, many of the governments of the studied nations including Laos and Cambodia, regard regional industry development and small and medium enterprise promotion as one unit of policy. On the other hand, however, development of regional industry tends to focus on non-advanced technology industries, such as handcraft and traditional craft, and labor-intensive industry, tending to

miss measures for small and medium enterprise promotion including SI promotion from a long-term and comprehensive viewpoint.

(8) Central city vitalization measures in Japan include the rebirth of central city areas based on the Central City Vitalization Law (1998, Law No. 92), the Large-Scale Retail Store Location Law, and the City Planning Law. These three laws allow the co-existences of manufacturing industry areas and service industry areas and of small and medium service enterprises and large corporations, contributing to the development of small and medium enterprises in urban areas and the avoidance of slum.

Among the studied nations, only Malaysia has clear small and medium enterprise promotion policies involving city planning.

(9) Logistics streamlining measures in Japan include the informatization of small and medium retailers, corporate management modernization, and other promotional measures based on the Small and Medium Retail Commerce Promotion Law (1973, Law No. 101) and the Specific Commerce Integration Law (1991, Law No. 82). Concerning the Specific Commerce Integration Law, which plays an important role in allowing the co-existence and co-prosperity of small and medium retailers, urban department stores, supermarkets, and other large-scale retailers, most of the studied nations, like Thailand, restrict the deployment of large-scale retailers by law, and have little room to tackle from regional city development viewpoint.

Moreover, Japan has instituted the Small and Medium Enterprise Distribution Efficiency Promotion Law (1992, Law No. 65) which aims to promote distribution efficiency of regional Small and Medium Enterprises. In most of the studied nations including Cambodia, in the first place, regional distribution has hardly been arranged and emphasized though some of them intend to promote such distribution.

(10) Labor measures in Japan emphasizes the improvement of labor conditions such as the reduction of labor hours, office environment improvement, and improvement of employment management such as social welfare facilities, in order for small and medium enterprises to recruit and maintain good labor force. For these purposes, based on the Law Concerning the Recruitment and Maintenance of Labor Force for Small and Medium Enterprises (1991, law No. 57), labor force recruitment and maintenance measures, employment stabilization measures, vocational ability development measures, and labor welfare measures are deployed.

(11) Energy and environment measures in Japan include providing the Basel Treaty related information, diagnosis, and guidance services. Also, diverse energy-saving measures and environmental measures cover energy-saving assistance by NEDO, etc., application of special depreciation rate (18%) on environmental pollution control equipment, and so on.

Meanwhile, almost all of the studied nations have respectively instituted an environment preservation law. Philippines also has energy-saving assistance programs.

(12) Internationalization measures in Japan and Malaysia emphasize the assistance of overseas

presence by small and medium enterprises. For example, Japan has JETRO, the Japan Small and Medium Enterprise Corporation, the Japan Chamber of Commerce and Industry, and so on. For developing nations, however, internationalization measures focus on the invitation of investment from overseas and the export of domestic commodities. For these measures, the chamber of commerce and industry of developing nations and JETRO hold exhibitions, trade fairs, and investment meetings, and provide matching service, etc.

2-1-3-4 Laws and policies concerning small and medium enterprise measures

Concerning small and medium enterprises, especially small-scale businesses which have large difference between large corporations, Japan's Small and Medium Enterprise Basic Law clearly states consideration for their promotion. More specifically, Japan's small and medium enterprises are assisted by the management improvement service, infrastructure facility service, and the finance of management improvement funds for small corporations based on the Law Concerning the Assistance of Small-Scale Businesses by Commerce and Industry Associations and Chambers of Commerce and Industry (for short, the Small-Scale Business Assistance Law, 1993, Law No. 51).

Moreover, assistance is provided by the equipment modernization fund system and the facility lease

	Model name	Model feature
1	Import replacement model	Starts to manufacture industrial products for the primary industry, such as agricultural equipment, fertilizers, agrochemicals, and gradually expand into the production of cements, tinplates, and other building materials, followed by light industries, such as the production of soaps, daily goods, textiles, and heavy industries such as the production of plastics products in order to strengthen industrial bases. This model has been adopted by Japan, Korea, and many other nations for industrial development strategy.
2	Raw material replacement model	Raw materials exporting nations gradually replaces raw material exports with processed products and other high-value-added products. For example, a raw cotton export nation exports raw cottons, processed cotton yarns and cotton fabrics. At the same time, their sub-industries need to be cultivated. A successful example is found in India where the export of raw cottons is gradually replaced with cotton yarns.
3	Industry intensive model	Based on a categorized sub-industry, this model gathers diverse industries into an industrial complex and industrial area, where product quality, supply scale, etc. are raised and supply side chains are expanded, including suppliers and distributors, to promote industries. Successful examples include Tsubame-shi and Kobe-shi, where the Western tableware and leather industries have been developed respectively.
4	Castle town model	Based on the manufacturing base of a famous corporation (like a castle), the corporation cultivates and integrates raw material suppliers to form and promote the industry based on the integration merits by integrated manufacturing under the umbrella of the corporation. Successful examples include Toyoda-shi and Hitachi-shi. Note, however, that too much dependence will cause strong influences on local raw material suppliers including small and medium enterprises, due to strategic changes of policy by the parent company.
5	Taiwan model (Silicon Valley model)	In this model, small and medium high-tech enterprises develops while networking with others. This model has drawn attention to Malaysia, Indonesia, Philippines, etc. Since high-technologies and speedy development are required, integration and assemble capabilities using communication networks are important. Taiwan and the Silicon Valley in the United States belong to this model. Ohta-ku also seems to belong this model, where small and medium enterprises with advanced processing technologies form a local network and operate as virtual large corporations to receive orders and engage in productions although they are not always IT related high-tech companies.

system based on the Law of Small and Medium Enterprise Modernization Fund Subsidies (1956, Law No. 115). Beneficial measures are also provided by the Small-Scale Corporation Benefit Society Law (1965, Law No. 102).

The basic idea is to find and assist enthusiastic small corporations, for example, participating in village vitalization projects to support the expansion of marketing channels for specialty products, while providing them with beneficial measures, and management guidance through the chamber of commerce and industry, etc. Moreover, the idea is to cultivate such small corporation managers so that they will become main players in the next generation for commerce and industry unions through meetings and activities at the local youth clubs and women's clubs. In other words, enthusiastic small corporations will have opportunities for growth and the other small corporations will receive beneficial protection measures.

Many nations carry out combined measures of unemployment and regional development for small and medium enterprises, especially for small-scale businesses. These methods are shared by the World Bank and other international donor organizations.

Japan provides micro finance only for equipment modernization. Moreover, a corporation applying for such finance is obliged to take prefectural modernization diagnosis. The micro finance function for small-scale businesses is carried by shinkin banks, regional banks, and other private financial institutions rather than the government. Thus, finance by the private sector is very rich in Japan compared with developing nations. On the other hand, since many of the studied developing nations just have traditional finance institutions such as pawnshops, shinkin-bank-like financial institutions are very limited, being unable to provide sufficient micro finances.

Furthermore, Japan is featured as having the business guaranty system where small corporations join the small-scale business beneficial system to accumulate fund. Such Japanese system is hardly found in developing nations.

Finally, the above descriptions concerning Japan's small and medium enterprise policies is based on the "Guide to Small and Medium Enterprise Measures" (1999) edited by the Japan Small and Medium Enterprise Management Consultants Association.

2-2 Small and medium enterprise promotion policy models and supporting systems

The former sections describes the legal systems and their purposes concerning small and medium enterprise promotion policies based on the policy tools used for small and medium enterprise promotion policies. This section describes strategic models of small and medium enterprise promotion and their relations with supporting policy tools.

Industrial promotion models concerning small and medium enterprises are subdivided into five models. Advanced nations have adopted these models consciously or unconsciously to build up today's leading positions. Note, however, that the five industrial models are only for analytical convenience; in reality, there are many factors for industrial promotion and the five models plus other factors are often integrated to carry actual industrial promotion.

(1) Import replacement model

The import replacement model as a strategy is not always limited to small and medium enterprises. This model is considered as a small and medium enterprise development strategy in broader meaning since small and medium enterprises in a strategic industry grow together through industrial cultivation.

First, industrial policies to replace import goods become very important for this strategy. In order to replace import goods with domestic goods, their import duties are raised and beneficial taxation measures are provided for the domestic industries in question. When import duties are raised, smuggling begins to take place, followed by a fierce battle by the competent authorities. In a nation like Japan, where the market with a certain size of population exists, domestic competition becomes active and product quality improves. However, in a nation where the market size is small, it is not certain whether such similar effects can take place or not. In recent years, since the WTO agreements have moved to relieve import duties, applying high import duties is against this move, and in some cases not permitted.

Therefore, it is important for the government to take indirect measures, namely to cultivate domestic corporations that replace import goods by (2) assistance measures to new business startups, etc. and domestic corporations that supply raw materials for those corporations as well as to improve manufacturing technologies (cost reduction and improvement in quality control) by (1) corporate management innovation assistance measures and (3) technical capability assistance measures, while not excluding foreign goods from the domestic market. Since distribution is important, the government also needs to deploy strategies that improve the distribution network of domestic products and that advertise good quality of domestic products to the people.

Second, in the past, cultivating industries is usually carried out from simple to complex industries, low technologies to high technologies, and small-scale to large-scale industries. In recent years, however, forming links between different industries has been regarded important. For least developing nations where agriculture is the main industry, there are many cases that irrigation facilities and other agricultural infrastructure as well as industries that manufacture agricultural equipment and produce agrochemicals and fertilizers are first constructed, followed with industries that manufacture cements, tinplates, pipes and other building materials in relation to agricultural infrastructure.

(2) Raw material replacement model

This strategy is also closely related to the preceding (1) and not limited to small and medium enterprises. Raw material exporting nations have adopted a strategy that promotes exporting processed products and other value-added products instead of exporting raw materials, such as raw cotton, crude oil, natural gas. Accordingly, this strategy has also led to the promotion of the domestic industries of raw materials to process raw materials before export. In other words, raw material exporting nations are shifting export products to high value-added processed products.

The government needs to provide domestic corporations with public test laboratory facilities and prototype manufacturing plant facilities by applying (3) technical capability improvement assistance measures and (6) measures for high mechanization so that they will be able to manufacture

processed products. In addition, since this strategy is also a trial to change established supply chains (raw material procurement → product processing → product distribution and flow of value-added products), exploring overseas markets through the chamber of commerce and industry, etc. and cultivating industries related to processing industries become important. However, there are cases that the raw material processing strategy has ended in failure. For example, although some raw cotton exporting nations process cotton yarns and cotton fabrics before export, their industrial growth remain at this level. As a result, other raw cotton exporting nations tend to control raw cotton procurement. On the other hand, the former raw cotton exporting nations cannot lower the prices of their cotton yarns and cotton fabrics products; they cannot improve export product quality so much; and they face difficulty in exporting cotton yarns and cotton fabrics products in question.

For least developing nations where agriculture is the main industry, at first, improving the quality of cassava, corn, coffee, and other cash crops are important. Many governments have tried adopting strategies that promote domestic corporations to process cassava and corn for feedstuff and to process coffee into famous brands. Meanwhile in Japan, producing or/and processing unique special products linked with the Ohita Prefecture image are regarded effective, like the one specialty product per village campaign deployed by Ohita Prefecture.

(3) Industrial integration model

By carrying out (6) measures for high mechanization, this strategy forms an industrial complex or industrial area where local industries and related industries are gathered together to promote an integrated industry. Since such industrial complex or industrial area comes to have the industrial integration function, product quality, supply quantity, etc. can be raised by making the most of integration merits and by using chambers of commerce and industry and trade associations. When single industrial integration reaches a certain scale, suppliers, distributors, etc. can be invited to join the industrial complex and to expand supply chains for industrial promotion. A successful example is Tsubame-shi, Niigata Prefecture. The city has successfully transformed from the Western tableware production industry to the metal processing industry.

The industrial integration model strategy also involves national characteristics and design thoughts such as industrial complex or industrial area. There is a typical failing case of this model. When industrial integration is carried out by corporations in the private sector in a short-term span, the integration tends to be mixed. As a result, integration of the same industry is hardly formed, leading to no formation of a rather broader range of regional industrial promotion in a long-term span. Another example of failure is found in Philippines, where local corporations in the private sector failed to establish a supply chain structure that promotes the integration of local industries and raw material suppliers because the developed export processing area didn't function as had been expected although foreign investments are successfully invited. Meanwhile, Japan once emphasized the integration of the same industry. However, Japan now is rather emphasizing the combination of different industries for synergy effects.

Many least developing nations hardly have industry, in the first place. Thus, even cultivating local corporations in the private industry has to start from manual industries, such as batik dyeing and

wood carving. A successful industrial integration of local manual industry is found at Ubud, Bali, Indonesia, where wood carving and watercolors are mainly targeted to visiting foreign tourists and handcraft markets in overseas. However, this integration is just the first step. How to appropriate the funds gained in the first step is the next challenge for industrial promotion.

(4) Castle town model

This model is based on the base of a large corporation to which raw materials and components suppliers are connected. The model is often developed intentionally or unintentionally. Since the central large corporation enables to integrate production by cultivating local suppliers, the local procurement rate will rise, enjoying integration merits. Local raw material and component suppliers (small and medium enterprises) will also have opportunities to expand sales by making the most of marketing channels of the central large corporation as well as having opportunities for technical guidance, etc. Such successful partnership is seen at Toyota where subcontract factories gather together centering on Toyota Motors, at Hitachi-shi where Hitachi is located, and at Ohta-shi where Fuji-Jyuko is located. Successful examples of this model are also seen in many parts of the world, like a town built up by big business Tata in India, and towns centering on a governmental corporation which plays an indispensable part of the local community in China.

In Malaysia, this type of partnership is adopted as the strategy of small- and medium-sized enterprise promotion under the name of Industrial Linkage Program (ILP).

However, when local suppliers and subcontractors, mostly small and medium enterprises, come to depend too much on the central corporation in the town, they will be under direct influence of the corporation's performance and strategy. When manufacture Hitachi suffered deficits, most local suppliers and subcontractors at Hitachi-shi also suffered deficits and are unable to promote an alternative industry. Another example is found at Kamaishi-shi, where a steel mill is closed, followed by the decline of the relevant local industries.

(5) Taiwan model (silicon valley model)

The Taiwan model or silicon valley model for industrial promotion has drawn attention to Malaysia, Indonesia, Philippines, etc. in recent years. In this model, IT-related high-tech corporations form integrated networks and often expand into a remarkable industry in a short period. This model may also includes Ohta-ku, Tokyo, where many of non-IT small and medium enterprises with high processing technologies form a local network like a virtual large manufacturer and receive orders and engage in production.

It is an oversimplified view that the industrial promotion based on this model just needs to integrate IT-related corporations. The model also requires network infrastructure and assistance from universities and other higher educational, and research and development institutions (for Japan, (4) plenitude in know-how-oriented management resources, (3) technical capability improvement assistance measures). In addition, since this model requires maintenance of high technologies and speedy developments, the government needs to perform quick clerical work relating to imports and

exports and intellectual property rights, including simplified and speedy processing for customs clearance and customs tariff.

When the above five strategies are overviewed, successful industrial promotion needs to start up desired new businesses or new businesses in desired industries. For this purpose, (2) assistance measures to new business startups, etc. is indispensable for the formation of new venture businesses. Second, industrial integration is necessary. Unless small and medium enterprises are integrated appropriately, (3) technical capability improvement assistance measures become inefficient, and raising productivity and local brand images are not easy. Besides physical integration, (4) plenitude in know-how-oriented management resources is also becoming increasingly important in forming an assistance network for small and medium enterprises.

Furthermore, networking is required at the next step by forming partnerships, small and medium enterprise linkage, and other types of cooperation strategies. What is important here is the form of an established network and its outputs, not the connection between individual corporations and different industrial links. In other words, the position that the established network occupies in relation to the government's development strategies and the amount of outputs from the network play a decisive role in development potentials.

Finally, many parts of the above descriptions in this report refer to or quotes from " Development Strategy in Asia " (by Hirokazu Kajiwara), " Economic Development and Role of Governments in Eastern Asia " (by Masahiko Aoki), and " Industrialization and Development: A Comparative Analysis " (by Ray Kiely and other).

Chapter 3 Undertakings by Other Assistance Organizations concerning the Promotion of Small and Medium Enterprises and Their Problems

3-1 General trend in assistance organization

Organizations which we have visited and surveyed this time include the World Bank, the Inter-American Development Bank (IDB), the European Bank for Reconstruction and Development (EBRD), the Organization for Economic Cooperation and Development (OECD) and the United States Agency for International Development (USAID). Generally speaking, it is quite an obvious fact that the area of the promotion of small and medium enterprises has been given a first-hand importance by any one of these organizations, and it seems likely that the concept of arranging ~~✕~~ Level Playing Field~~✕~~ for small and medium enterprises, which is a key word for the survey of this time, becomes a kind of common sense among such organization. And it is recognized by all of the organization which we have visited this time that ~~✕~~Laws and Regulations~~✕~~ therefore have an essential positioning, and in that sense such organization seems to have committed in some ways into the arrangement of legal system surrounding such enterprises.

However, a simple reference to the assistance of arranging legal system involves considerably different methods of approach according to respective organization. Among five organizations mentioned above, EBRD is the sole organization which has established in advance the legal system, which can be called a guideline or a model, in a concrete form and which carries out cooperation while modifying it in line with national circumstance or status of development of arrangement. Although some examples of legal system exist in other organizations, which is worthy of specific consideration, to which law and/or system work is to be implemented is substantially subject to the judgement of the person-in-charge of respective project. Completely contrary to an approach by a model legal system, IDB even extracts a method which fits respective circumstance from an individual case and fixes it.

However, organizations other than EBRD certainly carries out with a framework reflecting respective way of thinking, and Chile, Argentina and Hungary have been already listed as examples of an excellent model country in the area of legal system arrangement.

3-2 Financial institutions for international development

3-2-1 World Bank

The World Bank, an international assistance organization centered around the International Bank for Reconstruction and Development (IBRD) established in July 1944 and the International Development Association (IDA) established in December 1945, is commonly called the World Bank. However, it is to be more accurately called as the World Bank group in which the following five institutions form a group: the International Bank for Reconstruction and Development, IBRD, having 181 member states as at the end of February 1998; the International Development Association, IDA, having 160 member states as at the end of February 1998; the International Finance Corporation, IFC; the Multilateral Investment Guarantee Agency, MIGA; the International Center for Settlement of

Investment Disputes, ICSID. Out of these, institutions which provide direct assistance for the promotion policy of small and medium enterprises in developing countries are the Private Sector Development Department, PSDD, in the IBRD which carries out technical assistance and micro finance, IFC which provides development services of small and medium enterprises in developing countries in a form of direct investment and MIGA which carries out the promotion policy of small and medium enterprises in developing countries in the area of facilitating investment and export. However, since IFC and MIGA do not provide direct assistance for the promotion policy of small and medium enterprises, we restrict our explanation here to the assistance for the development policy of small and medium enterprises provided by PSDD in IBRD.

In principle, the development assistance by IBRD is carried out by a matrix of sector unit such as energy sector and of region unit such as southeast Asian region. PSDD in IBRD has a positioning of a group of experts in the World Bank Headquarter for small and medium enterprises promotion and provides assistance in the form of being involved in the assistance by the World Bank performed in region and sector, of dispatching experts in connection with items of small and medium enterprises scheme performed there within the sector promotion master plan and of cooperating. Although there exists an assistance project relating to small and medium enterprises promotion policy performed by the World Bank, amount and number of cases of such project have decreased as the time goes by. The direction of assistance by the World Bank has changed, as mentioned above, to the assistance carried out as one of the items in the sector development. However, with respect to the countermeasure for small enterprises, especially the micro finance, it has the nature of the measure against poverty and unemployment and as such the number of cases and amount are increasing.

(1) Definition of small and medium enterprises

According to PSDD's Small Enterprise Development Unit, the definition of small and medium enterprises varies country to country. And the World Bank announces that although it has no explicit definition, but it generally considers of an enterprise as a small-scale enterprise if number of its employees is 5 to 10, as a small enterprise if number of employees is approximately 50 to 100, and as a medium enterprise if number of employees is approximately 100 to 250 and that it also determines, in line with the nature of a project, taking into other elements such as scale of asset etc. According to a person-in-charge who actually worked as a task manager in a project for small and medium enterprises promotion policy in Central Asia, he considers of an enterprise as a small-scale enterprise if managed by an operating capital of approximately 150 to 900 U.S. Dollars annually, as a small enterprise if managed by approximately 1,000 to 5,000 U.S. Dollars annually like a light industry, a food distribution company, a repair factory or a textile mill as a domestic industry and a medium enterprise if managed by approximately 50,000 to 250,000 U.S. Dollars annually. These amount can be considered as the amount which are actually financed (in the project).

(2) World Bank's way of thinking on small and medium enterprises promotion policy

The World Bank considers that the separation should be made between small and medium enterprises and small-scale enterprises (small business), that small and medium enterprise should in principle carry out their business under free competition and market principle and that the

Government should arrange Level Playing Field (equal opportunity for competition) for that purpose and should not implement discriminatory policy such as industrial protection.

However, the World Bank considers that there are three major restrictions as follows for small and medium enterprises including small-scale enterprises and that these restrictions prevent them from conducting free competition with large enterprises on equal footing:

- (i) restriction on external managerial environment such as regulations which are too much rigid for small and medium enterprises;
- (ii) restriction of access to market, information and finance etc.; and,
- (iii) restriction on internal managerial environment relative to accounting, technology for manufacturing and control, business plan etc.

In this connection, the World Bank announces that if these restrictions are removed or alleviated, small and medium enterprises can conduct free competition with large enterprises on equal footing and that therefore the Government or the World Bank assists the arrangement of environment in which these restrictions will be removed or alleviated.

In particular, with respect to restriction on external managerial environment under (i), the World Bank finds the following problems and is about to provide the assistance for policies which enable to eliminate them:

regulations which constitute obstacle for the market entry or which lead to unequal competition in the market;

regulations which force small and medium enterprises to have unequal burden in terms of cost and time in connection with licensing, registration or registry etc.;

system of collecting tax which disturbs the growth of small and medium enterprises;

a loose establishment of ownership right which causes inconveniences in case of establishment of mortgage on asset;

inappropriate legal system with regard to commercial transaction and dispute resolution which prevents from taking business risk;

tax system which is unfavorable for small and medium enterprises;

placing order by official or public entity which is detrimental for small and medium enterprises to challenge;

land development regulation which rejects small and medium enterprises entering into a lucrative market;

uneconomical provision of infrastructure by the Government with regard to, in particular, traffic, public utility and market facility etc.;

overly rigid labor laws and regulations which make discharge and employment of workers difficult or costly or which hinder flexible and mobilized utilization of labor resources.

Further, with respect to access to finance under (ii), the World Bank furnishes the direct financial assistance, such as micro finance, in connection with small-scale enterprises announcing that it is particularly difficult for them to access to finance and that such measure can be viewed as a measure against poverty and unemployment. For example, with regard to the micro finance in connection with a measure against poverty, the World Bank provides assistance through CGAP (Consultative Group to Assist the Poorest) and NGOs etc.

3-2-2 Inter-American Development Bank

IDB (Inter-American Development Bank) is a financial institution for the regional development having an objective of promoting economic and social development of the Central and South American region. In 1959 its establishment was determined by the parliament of 21 countries in American States, and it commenced its operation in 1960. The original member states were 25 developing countries in the Central and South America or Caribbean Sea region in addition to developed countries of the United States of America and Canada, totaling 27 countries. The amendment to the Agreement in 1972 allowed participation by countries outside the region, and thus 17 countries outside region, such as Japan or Germany, became member in 1976. Presently, the number of member states is 48, and the Headquarter is located in Washington. The approved amount of finance in the year of 1997 was U.S. 6 billion 17 million Dollars, and the aggregated amount from 1961 through 1997 is U.S. 84 billion 10 million Dollars.

(1) Covered policy area

Policy areas which IDB intends to cover are the following three areas:

(i) Supporting Policy Reform

Reform of financial sector can be taken for an example.

(ii) Direct Technical Assistance

This is provided through Multilateral Fund toward the private sector such as the Chamber of Commerce and Industry or universities and is similar to Grant. IDB also provides technical cooperation to assist the arrangement of the Capital Market. IDB further provides assistance to establish and rear the organization which professionally deals with the promotion of small and medium enterprises. In providing assistance, IDB takes into consideration the stage of organizational development of respective country, does not adopt a method of setting a model pattern, makes efforts to base on the actual circumstance of each country and adopts the method of entrustment by IDB to professionals.

(iii) Round Table Discussion

This is to participate in conferences hosted by countries concerned on the promotion policy of small and medium enterprises. Such conferences include the Global Type Dialogue and One by One Dialogue.

(2) Enterprise development strategy, small and medium enterprises

The primary objectives of IDB's Enterprise Development Strategy, Small and Medium Enterprises, March 1995 are to help strengthen the competitiveness of small and medium enterprises

so that they can contribute to long-term growth and maintenance of employment, and for such purpose those objectives also attach importance to create level playing field and eliminate unfavorable position in the market as well as to remove distortions of the market or other restrictions which hinder development of small and medium enterprises.

And while IDB recognizes that unfavorable elements of small and medium enterprises are mainly based on the fact that they have difficulty to finance large amount of fixed capital, that they lack in economy of scale and that they are deprived of basic factors for production, IDB makes it one of its objectives to reduce the obstacles relative to organization or regulation which is unfavorable for small and medium enterprises. Further, since problems of input market (capital, labor, technology and other requirements for production), problems of output market (pricing, competition, access to market information) and problems of regulations (policies on taxation, customs duty, procurement, corporate governance, control on business activity) are intertwined, IDB considers it necessary to supplement the unfavorable position by such measures as reducing transaction cost at the time of conducting business, as assisting the provision of financial and non-financial services based on cost sharing principle and through market mechanism and as strengthening organization for small and medium enterprises.

IDB has a long-term influential achievement on the assistance itself to small and medium enterprises sector. For example, while the Multi Sectoral Global Credits financed 2.5 billion U.S. Dollars since 1990 as the IDB fund, this financing amounted to the total loan of 4.8 billion U.S. Dollars by the reinforcement through local financial institutions. During the same period, non-financial services loans also amounted to the total of 1.3 billion U.S. Dollars.

As a part of these efforts, IDB established the Inter-American Investment Corporation (IIC) in 1989 for the purpose of corresponding to local financial needs. As of 1997, IIC was involved in 180 transactions amounting to the total of 450 million U.S. Dollars. Multilateral Investment Fund is also involved in establishing 8 Venture Capital Funds in this area. The total amount is 35 million U.S. Dollars and covers ordinary small enterprises or specific small enterprises of specified industry type. Modernization and reform of government, decentralization and restructuring of labor market are listed as important items for the future, and IDB considers regulatory matters, procurement and dispute resolution as themes relating to these issues. Regulatory matters need to be considered within a transaction-cost framework and relate to government, labor, transaction or competition etc. IDB has an understanding that the playing field in which small and medium enterprises can do business can be established and their growth and absorption of labor can be facilitated by means of reforming such regulatory environment at the time of conducting business. In relation to this, IDB also assists the establishment of associations of small and medium enterprises. Because these associations can be expected to take a role of an excellent monitor for the promotion of policies such as bills, enforcement of laws and judicial resolution.

Policies for small and medium enterprises are a kind of amalgamation of macro policies and micro policies, and it is essential to create fairness and transparency of competition. Since the circumstance

where such creation is made varies country to country, IDB does not cooperate with certain model as a base but takes an approach of tailoring individual strategy matching to respective circumstance of each country. In this connection, Argentina, which can be regarded as a typical case, has established a strong organization for small and medium enterprises policy and is energetic for human resources development and training of public service personnel. IDB provides assistance and guidance on what kind of legal system and its implementation system are to be structured to alleviate their problems. The name of CORFO in Chile is also noted as a successful example.

3-2-3 European Bank for Reconstruction and Development

The decision to establish European Bank for Reconstruction and Development was made at the EC summit meeting, and it was established in March 1991. Its objectives are to assist transition to market economy of former Soviet Union and east European countries and to promote the leadership of the private sector in that region, and its roles are in principle (i) loan for corporations (syndicated loan with official institutions such as the World Bank or private banks is also possible), (ii) investment service including subscription of stocks, (iii) guarantee service and (iv) technical assistance etc.

(1) Assistance for arrangement of legal system

As the characteristic of the European Bank for Reconstruction and Development (EBRD) which provides services along the stream of philosophy of European Continent, a model approach can be noted which structures an ideal of laws or prototype as a model and carries out the arrangement of laws with such model as a standard. The Legal Transition Team within the Office of the General Council of EBRD now fixes model laws for certain laws and assists the arrangement of laws centering around east European and former Soviet Union countries which need the arrangement of laws urgently due to the reasons of the enrollment to EU etc. Hungary is already raised as a successful model country.

The focal issues are narrowed down to (i) bankruptcy, (ii) corporate laws and corporate management, (iii) authorization of concession, (iv) regulation on capital market, (v) secured transactions and (vi) reform of regulation on telecommunication. Model laws are completed partly owing to Japan's monetary offer. Cooperating with universities or law firms of various countries and areas, they are being prepared by a mixed team of members having the background of civil law and common law and by merging two law systems.

It can be said that this kind of approach is completely different from a so-called pragmatic approach adopted by IDB formula which, with regard to the arrangement of legal system, does not establish certain model and changes approach according to individual circumstance. However, EBRD does not introduce model laws into various countries as they are, but rather it adopts an approach of preparing laws while adding or modifying necessary items depending on situations. Generally speaking, countries under negotiations for the enrollment into EU have advanced legal system.

And, since EU is an entity among the stockholders of EBRD, close consultations are being held on a regular basis in connection with legal system reform. Countries to which assistance is provided include former Soviet Union countries in the European countries, east European countries and central Asian countries, and the degree of involvement is almost same. And whether model laws are operated successfully after their introduction is being researched by internal inspectors.

And as the Office of the General Council in EBRD understands that while the arrangement of laws is important, rearing of human resources who implement them is also important, and for such purpose EBRD publishes a professional legal magazine, " Law in Transition, " on a quarterly basis from the position that EBRD carries out the enlightening activity.

(2) Management assistance for individual corporation

Turn Around Management (TAM) Program carried out by EBRD was established for the purpose of assisting, through tripartite coordination with UNDP, EBRD and EU, transformation of state-owned corporations in central and eastern Europe and former Soviet Union to profitable and autonomous private corporations in the future. Presently, it consists of 12 headquarter personnel and 250 part-time professionals. Up to now, it has directed more than 600 projects and provided assistance to corporations which were under the process of economic transition. And Japan also makes monetary offer for this program.

In concrete terms, this program is an activity to provide assistance for privatized corporations from the aspect of preparing business plan etc. including sales, finance and production and to become a help to induce investment and loan, and it also has an objective to bring them up such corporation which are eligible for the EBRD loan (normally a corporation with 10,000 employees).

The TAM service is operated by a fund of 45 million U.S. Dollars, the breakdown of which is 1.2 million U.S. Dollars from UNDP, 18.5 million U.S. Dollars from EU PHARE, 2.3 million U.S. Dollars from EU TACIS, 3.5 million U.S. Dollars from Russia, 6.7 million U.S. Dollars from Nordic, and 12.8 million U.S. Dollars from Multilateral Countries Technical Assistance Fund of EBRD (including 2.0 million U.S. Dollars from Japan) and dispatches human resources having experience of corporate management in private companies as consultants.

While 45 Japanese experts are registered in a consultant database, senior industrial experts, sector technical experts and management coordinator (who controls and coordinates 12 projects every year) are also needed. The term of dispatch is formerly 90 days, but now visiting of 6- 8 times totaling 60 days are used for advice at the site and, in other periods, advice is given by facsimile etc. Those who are thought to be desirable for senior industrial experts are such person as has practical experience of 15 years or more, as is capable of getting accustomed to living in foreign countries and as 55 years or older, and additional conditions are attached such as small burden of taking care of his/her family with his/her children already coming to an age, having a good command of English language and satisfying with remuneration of 500 U.S. Dollars a day etc.

One project covers one company, and such company has 300 employees or more averaging 900 ₺ 1,000. Company of the subject is selected by EBRD's country team or directly applies for as was the case in Poland. The criteria for selection is that a company is not a bank or does not belong to military, gambling or tobacco industry, further, it is important whether or not a responsible person of the company is active. And the cost for one case is approximately 85,500 EURO in total in case of former Soviet Union countries.

3-2-4 Asian Development Bank

In order to realize the objectives of promoting economic development of developing countries within the region, Asian Development Bank (ADB) carries out loan of development fund, guarantee of loan, investment, utilization of resources, promotion of economic system of mutual supplement, assistance for expansion of trade within the region and technical assistance. Basically, ADB attaches an importance to the arrangement of more transparent and simplified business environment and open market, and although there are no guideline, but ADB considers it important to arrange legal system such as corporate laws (including contract law and bankruptcy law) and competition laws (including anti-trust law). And from the viewpoint of Corporate Governance, it also place an emphasis on the legal system, especially on bankruptcy law. This is simply a meaning of legal environment covering corporations in general and does not necessarily narrow down to small and medium enterprises, and a law such as the basic law for small and medium enterprises is not made much of. However, while the present circumstance allows most of small and medium enterprises access only to a loan program with high interest rate, attempt are now under way to set up a program which, to begin with, includes credit guarantee system and seminar for bank employees and to facilitate the loan by ordinary commercial banks.

(1) Promotion of small and medium enterprises and way of thinking on arrangement of legal system

ADB also adopts a concept that it is important to arrange a legal system with regard to "Level Playing Field," that is to say, an equal opportunity for competition and stands on an understanding that both small and medium enterprises and large enterprises should compete in the same free competition society and that the role of government is to arrange the opportunity in which such competition is conducted on an equal basis. Therefore, ADB's approach, similar to that of the World Bank etc., regards the promotion of small and medium enterprises as the promotion of private enterprises sector, and, further, the policy for this promotion of private enterprises sector is thought to be one items out of industry promotion and adjustment plan for industrial structure. And, similar to the World Bank and other international assistance organization, the direct loan by micro finance project is carried out with regard to small business from the viewpoint of counter measures against poverty, unemployment and activation of local society.

For example, during the course of the settlement after the Asian Crisis which can be said as the main body of assistance in recent years, ADB has promoted financial reform in many countries. While one of the themes within such reform is the reorganization of policy financial institutions, ADB divides the role of policy financial institutions for small and medium enterprises into direct financing

function and credit guarantee system. ADB instructs that direct financing function should rather be transferred to private banks and government should retreat from direct financing and control the framework. ADB also divides the roles of the central bank and the government and instructs the separation of financial control and financial policy function, in which the central bank should control banks and currency distribution and the role of government should be narrowed down to policy. As an example of such financial reform, ADB's proposal now made to Thailand and Indonesia make us know the way of thinking of ADB on financial reform.

The second subject ADB now promotes is tax system reform. Many Asian countries which ADB covers have recently been under the pressure of globalization, such as WTO, or free trade principle and have become to realize that they cannot help adjusting their tax system. This leads to the direction of the abolition of customs duty and means not only that it will become impossible for them to protect their domestic industry by customs duty but also that they will be deprived of sources of fund for policy investment. In this connection, ADB instructs to secure the annual revenue, to transform from direct tax to indirect tax, to cause customs duty to react smoothly to WTO etc. as well as to structure the Institution which reforms tax system and implement it. As an example of such tax system reform, ADB's proposal made to Vietnam make us know the way of thinking of ADB.

Further, with respect to arrangement of laws in general, ADB not only holds various seminar or round table meetings but also makes variety of proposal or instructions, and stresses that the overall system of laws should be the basis of the promotion of private sector. As an example to know ADB's practice of legal system for entire nation, the project for Mongolian Government is to be noted.

And as mentioned before, ADB's way of thinking to small business, which is different from that to the promotion of small and medium enterprises, incorporates a concept of promoting local society into the thinking of helping the weak, and micro finance is being carried out. As a characteristic of ADB micro finance, the fact that it has rather well-prepared models or frameworks, which are similar to USAID or EBRD, is to be noted.

3-3 Other international organization

3-3-1 Organization for Economic Cooperation and Development

OECD (Organization for Economic Cooperation and Development) was established in September 1961 by adding the United States of America and Canada into the OEEC (Organization of European Economic Cooperation) which was an acceptance organ for Marshall Plan (European Reconstruction Plan) after the World War II. The original member states were 20 countries, which were 18 OEEC member states, such as the United Kingdom, France, Germany, Italy etc. plus the United States of America and Canada. After that, Japan (joined in April 1964), Czech, Hungary, Poland, Korea etc. joined, the number of member states (formal member) as of the end of July 1999 is 29 countries.

Its purpose is to promote the stabilized growth of economy and the expansion of trade, and at the same time to coordinate the aid and assistance for developing countries. Its secretariat is located in Paris. OECD has Ministerial Council, which is held once a year, and the standing representatives

conference decide a policy, and, as the subordinating organization, it has 35 committees covering economic policy, trade, development aid etc. and carries out economic analysis and recommendation of policies to the Council. Development Assistance Committee (DAC) was created in 1960 as an organization for coordinating aid policies for developing countries.

(1) Way of thinking on small and medium enterprises promotion

While in the recent policy for small and medium enterprises in the U.S. and European countries, a concept called *“Birth Right Economy”* has been advocated, which calls for ensuring an opportunity of free growth and development for a group of newly established companies, it has been confirmed by the OECD Ministerial Council in April 1998 that *“the improvement of the condition for creation and growth by small and medium enterprises is important for economic growth and securing employment.”* And it is said that the weight of policy has been shifted to the establishment of business or rearing of venture capital, facilitation of technological innovation of small and medium enterprises and the creation of employment as the result.

In the policy for small and medium enterprises, the most important element is to enhance fairness and transparency of competition, and the realization of fair competition is the most important task. The transparency of competition is that any and all disputes should be resolved under the law by the judicial system, the role to be performed by public prosecutor sector is large in implementing fair competition policy or consumer protection policy.

While one of the purposes of the policy for small and medium enterprises is to create employment, welfare protection policies for individuals and those for corporations should not be mixed up. If a policy for small and medium enterprises is protective, it is not consistent with the fair competition policy. The same thing can be said about the tax policy, and it is understood that the progressive taxation system etc. cannot be applicable to legal persons or corporations, though it may be all right for individuals.

With respect to the cooperation in the same area, OECD does not have a general policy for small and medium enterprises assistance for developing countries since it regards, in principle, the economic policy of member states to be the most important. And it recognizes that assistance for enterprises would not bring about substantial effects if certain level of market economy would not be achieved. However, since the provision of assistance to a country which is thought to be capable of utilizing experiences of OECD states successfully may be recognized as meaningful, OECD also understands that it is possible for it to provide some Asian countries with cooperation carried out by APEC in such areas as finance, management, human resources rearing, vocational training and technical area.

Further, while it is in principle the Science, Technology and Industry Bureau which carries out programs relating to small and medium enterprises, DAC also holds international conferences with regard to the promotion of small and medium enterprises.

(2) Tasks for the future

From the viewpoint of Knowledge based Economy which is discussed quite often recently, since it can be considered that small and medium enterprises centering service sector, rather than industry centering large corporations, will become the core of the economy OECD understands that it is important for countries including OECD member states to arrange environment in which such sectors can be developed and that, for purposes of resolving such tasks, it is necessary to create an environment in which risk-taking is easy to be done and where Equity Financing, rather than Debt Financing, becomes the main stream. And from the standpoint of enabling participation of more organization and individuals, intellectual property right and competition laws also have quite a large role, and, in this respect, intellectual assistance etc. for arranging such laws is to be noted as a promising area.

Further, in order to make resources flow from bad area to good area quickly, labor laws in the sense of enhancing the liquidity of workers, bankruptcy laws in the sense of improving liquidity of corporations themselves and trade policies from the viewpoint of making competition more fierce and of improving competitiveness are all important. Although there is a concern that human resources rearing by corporations would become difficult to be conducted if liquidity of workers would be enhanced, but in order to deal with such trend, it is considered that a way of thinking would be necessary in which, even if the initiative is taken by corporations, training by publicly-borne fund such as subsidy should be increased and human resources should be accumulated by whole nation.

3-4 Governmental assistance organization

3-4-1 United States Agency for International Development

In March 1961, then President Kennedy delivered the ~~✕~~Special Message on Foreign Assistance~~✕~~ to the Congress and proposed a new concept of foreign assistance. For the purpose of realizing this foreign assistance concept, ~~✕~~Foreign Assistance Act 1961~~✕~~ was enacted in November 1961, and, with this Act as the base law, the United States Agency for International Development (USAID) was established as an organization which carried out assistance. And at the beginning of establishment, it was an organization which absorbed International Cooperation Bureau, Development Credit Fund, technical assistance departments of the Department of State and a part of service of the United States Export and Import Bank, and the International Development Cooperation Agency (IDCA) was formed in 1979, thus becoming a legally independent body from the Department of State.

Since the USAID is an organization which carries out assistance policies of the U.S., it rather attaches importance to policies. These are the U.S. assistance policies, but at the same time, it makes efforts to introduce and promote Democracy and to realize Sustainable Political Reform such as the assistance to east European countries and former Soviet Union countries. In this sense, a policy is so structured that the policy assistance has a priority then followed by economic aid. However, although the USAID carried out policy assistance many times in the past, but the result were not necessarily satisfactory. As a result of this, it pours energy into three areas recently: human rights, assistance through NGO and social issues. Naturally, policy assistance and economic aid cannot be clearly separated and are merged into one object, but the policy in which policy comes first then followed by

economic aid does not change. Because of this policy, the USAID attaches more importance to policy performance than economic performance.

And the USAID is divided into two organizations: the Global Bureau and the Economic Growth and Agriculture. The Global Bureau carries out assistance according to region, while the Economic Growth and Agriculture carries out assistance according to sector. At the time of research, foreign assistance was carried out by a bureau which covered Africa, Asia and Middle East, Latin America and Caribbean, Europe and new independents and by a bureau which covered human rights. Although small and medium enterprises are given importance as one of items of aid program by respective department, these aid program are not necessarily carried out as projects for promotion policy for small and medium enterprises, but, as in the case of the World Bank, policy assistance for small and medium enterprises is being provided as one item of master plan in the sector concerned.

(1) Policy assistance for small and medium enterprises

As mentioned above, while the USAID, setting aside issues relating to human rights, carries out foreign assistance by region system, it formed an organization called the Microenterprise Development in 1994 in connection with small enterprise assistance for the purpose of supplement defects in which policy for small and medium enterprises are carried out in an inconsistent manner and it decided to carry out assistance in a manner consolidated into this organization. This section consists of 11 staffs and provides assistance for Micro Enterprise Development and for small and medium enterprises in a form of (i) Microfinance, (ii) technology assistance and (iii) technical assistance in connection with Micro Enterprise Development for respective department in the USAID. However, for small and medium enterprises, assistance is still provided separately in the region.

For example, the purposes of policy assistance for small and medium enterprises by region-in-charge in Bureau for Europe and NIS (ENI) which we visited and researched are ~~to~~ to create a free market in which regulation by laws effectively assists small business of private capital and commercial activity of small and medium enterprises and intends to rear private enterprises by three-step measure of rearing of enterprises - market development- creation of functional market while providing the following two assistance:

technical assistance for the improvement of managerial control of small and medium enterprises (reinforcement assistance of management base);

assistance for the establishment and the maintenance by government of free competitive market.

And as the reflection of past assistance, it says that not only the arrangement of the regulation by laws but also the implementation of the regulation by laws is quite important and stresses the implementation and the arrangement not by government alone but by government coordinated with NGO.

Further, the way of thinking of the USAID for small and medium enterprises promotion is, in principle, the same as that of the World Bank, and, similarly, the USAID considers microenterprises in a slightly different manner from the ordinary small and medium enterprises policy.

(2) Microenterprises policy

The definition of Microenterprise in the USAID's Microenterprise Development is (i) a company with less than 10 employees including employees, such as family members, for whom wages are not paid, (ii) a company which deals in a business with low revenue by small asset based upon Common Asset or (iii) an industry other than agriculture. As for being other than agriculture, an industry other than a so-called farmer who directly produces agricultural products is included. Therefore, food processing and agricultural products distribution business are included in the definition of Microenterprise. As mentioned before, Microenterprise has a meaning of Safety Net and Safety Guard.

The USAID's Microfinance is being carried out through Fund and NGO. However, the USAID not only carries out monetary aid but attaches importance to Business Development. This Business Development carries out monetary aid for Business Development Provider, and Business Development Provider such as NGOs etc. provide services in developing countries.

What the USAID carries out as technical assistance includes the arrangement of Legal System, license, matters relating to export and import, official harassment, training, capacity building (development of capability) and research, and it also carries out various joint program with the World Bank etc. Technical assistance which the USAID attaches the greatest importance is the preparation of framework of Microenterprise Development and policy, which include (i) reform of legal system or regulation, (ii) selection of area in which energy should be poured on a strategic manner, (iii) arrangement and reform of consumer finance (Small Bank). For example, the USAID has dispatched an expert to Ministry of Cooperative and Small Enterprises of Indonesia and structures such policy. Revision of laws or reform of regulation include the arrangement of the anti-trust laws and prevention of corruption. And official harassment is the assistance to resolve a problem: for example, in Russia, to bully Microenterprise on the strength of laws and interfere with commercial activity. For others, it carries out training or marketing service.

While Microcredit assistance program of the USAID is mainly carried out through NGOs, within such experiences, Mobilizing Selling, Commercial Bank Provide Micro-Credit, Supervising have turned out to be important. Especially, Micro-Credit re-Found is important, and for such purpose, the reform of laws and regulations relative to Micro-Finance have turned out to be important. The USAID does not consider specific area in which special energy should be poured and to which special importance should be attached with regard to policy assistance for small and medium enterprises including Microenterprises Policy. Rather, it adopts a way of thinking in which needs vary country to country, and area and plan to which energy should be poured are different according to the status of development. However, (i) relief from poverty for women and the weak and poor class and (ii) assistance program for Financial Disability are the areas to which the USAID especially pours energy.

Chapter 4 State of Consolidation of Legal System concerning the Promotion of Small and Medium Enterprises in Each Country

4-1 Summary

Table for state of consolidation of legal system concerning development of small and medium enterprises in each country

Country	Poland	Bulgaria	Indonesia	Malaysia	Philippines
National plan	Not known	National Economic Development Plan 2000-2006	None. But the Guideline of the State Policy Looking to the Future of the Indonesian Economy was drawn up provisionally.	Seventh Malaysia Plan 1996-2000	The Phillippine National Development Plan: Directions for the 21st Century Medium-Term Phillippine Development Plan 1999-2004
Plan for Small and Medium Enterprises development	Government Policy Guideline for Small and Medium Enterprises until 2002	National Strategy for Stimulating the Development of Small and Medium Enterprises	None	None. But, small and medium-size enterprise development is included as a part of the Second Industrial Master Plan 1996-2005	The Phillippine SME Development Strategy: forging a truly dynamic and competitive SME Sector
Organization in charge of policy for Small and Medium Enterprises	Department of Craft, Small and Medium Enterprises, Ministry of Economy	Agency for Small and Medium Enterprises	Ministry of Industry and Trade, Ministry of Cooperatives, Small and Medium Enterprises MOIT is in charge of industrial development, and MCSME is in charge of small-size enterprises development (at present, fluid)	Ministry of International Trade and Industry, Small and Medium Industries Dev. Corp., Ministry of Entrepreneur Development, SMIDEC is in charge of small and medium-size enterprise development, and MED is in charge of small-size enterprise development	Small and Medium Enterprise Development Council Bureau of Small and Medium Business Development, Department of Trade and Industry
Civil law	Civil Code 1964	Already consolidated	Civil Code of 1987	Contracts Act 1950, Contracts (Amendment) Act 1976	Civil Code 1949 Common Carriage Law,
Commercial law	Commercial Code 1934, Protection of Business Dealings Act 1994	Commercial Law	Commercial Code of 1874	Companies Act 1965, Partnership Act 1961	Insurance Code, Negotiable Instruments Law, Code of Commerce
Company law	Commercialization and Privatization of State Enterprise Act 1996, Companies with Foreign Shareholdings Act 1991		Law No.1/1995 concerning Incorporated, published on March 7, 1995		Corporation Code 1980, Law on Partnership
Labor law	Labor Code 1974	Labour Code 1951, Law for Healthy and Safe Labour Conditions, Law for The Vocational Education and Training	Act No.1/1951, Act No.2/1951, Act No.21/1954 (Collective Labor Agreement), Act No. 18/1956, Act No.22/1957 (The Settlement of Labor Dispute), Act No.12/1964 (Termination of Employment Act No.14/1969, Act No.1/1970 (Safety), Act No.1/1975	Industrial Relations Act 1967, Employment Act 1955, Trade Unions Act 1959	Labor Code

Bankruptcy law	Bankruptcy act 1934	Already consolidated	There was a bankruptcy law, which was strongly influenced by Dutch law of 1906, and the amendment of the Bankruptcy Act was published on April 22, 1998, and enforced on August 23, 1998	The Bankruptcy Act of 1967 stipulates bankruptcy of individual person, and the Companies Act of 1965 stipulates bankruptcy of legal person. In addition, there is Companies (Winding-up) Rules of 1972.	Insolvency Law
Social security law	Overall revision in 1999	Law for The Health Assurance, Law for Additional Voluntary Pension Insurance	Law No.3/1992 Act on The Employees' Social Security	Already consolidated	Social Security Act of 1997
Intellectual property law	Copyright and Neighboring Rights Act 1994	Law for The Copyright and Related Rights, Law for The Patents, Law for The Industrial Design, Law for Protection of the New Sorts of Plants and Animal Breed	Patent Law 1989, Revised Trademark Law 1993, Revised Copyright Law 1987	Trade Mark Act 1976, Patents Act 1995, Copyright Act 1987	Patent Law, Trademark Law, Copyright Law
Antimonopoly law	Counteracting Monopolistic Practices Act 1990, Suppression of Unfair Competition Act 1993	Law for Protection of the Consumers and for the Trade Rules	Published on March 5, 1999 and enforced on March 5, 2000. Although USAID indicated a bill for competition in 1993, it was not adopted. German type with assistance of German specialists. It was conditioned for IMF financing.	Not yet consolidated. At present, enactment is under study.	Already consolidated
Registration law	Already consolidated	Law for The Civil Registration	Registration of land is handled by the Land Office, and commercial registration by Register's Office.	National Land Code Registration of land is handled by the Land Office. Registration of Business Act. Ministry of Domestic Trade and Consumer Affairs is in charge of commercial registration.	The Land Registration Act, the Publicly-Owned Land Act, the Right on Land Act Registration of land is handled by the Bureau of Land.
Commercial dispute settlement law			Arbitration and ADR Law		
Small and medium-size enterprise law	None. The definition of small and medium enterprise is described in the Economic Activity Law. The basic idea is that small and medium enterprise development is to some extent possible by utilizing existing laws and policy tools even if there is no small and medium enterprise specific law.	Small and Medium Enterprise Act	The Law of the Republic of Indonesia Number 9 of the Year 1995 Concerning Small Business, Republic of Indonesia President Instruction Number 10, the Year 1999. The Law #9, 1995 stipulates the development of small enterprise. Medium enterprises are stipulated by the President Instruction #10, 1999.	None. The basic standpoint is that of small and medium enterprise development is possible by combining various policy tools. In fact, there exist full set of policy tools for the promotion of small and medium enterprises.	Magna Carta for Small Enterprises (R.A.6977), January 24, 1991

Accounting system	Accounting standards are already consolidated.	Accounting standards are already consolidated.	Accounting standards are already consolidated.	Accounting standards are already consolidated.	Accounting standards are already consolidated.
Corporate tax	It is planned to lower the current standard tax rate 32% further.	The standard tax rate 27% (20% for small-size enterprises)	The standard tax rates are progressive, 10, 15 and 30%	The standard tax rate 28% (25% for joint-ventures with foreign capital)	The standard tax rate 32%
Income tax	Progressive taxation	Progressive taxation	Progressive taxation	Progressive taxation	Progressive taxation
Customs duty	Following the EU	Following the EU	Existing	Existing	Existing
Value-added tax	Following the EU, 22%	Following the EU, 20%	10%	Sales tax, service tax, commodity tax	10%
Remarks	As the biggest challenge at present is to join the EU, following the EU is the general rule for legal system.	As the biggest challenge at present is to join the EU, following the EU is the general rule for legal system.	There are confusions as the various reforms, including reform of the legal regulations, have been planned and enforced. The scope of authorization of the Ministries is fluid, and the policy for small and medium enterprise development has not yet been made clear.	The policy for small and medium enterprise development has been bringing effects satisfactorily, since the legal regulations and policies are well founded and their implementation is stable under strong initiative of the government.	Although there are legal regulations which are clear and advanced as well as well-organized, since the government lacks strong initiative and, therefore, the legal regulations is not properly implemented, they have not yet brought effects.

Table for state of consolidation of legal system concerning development of small and medium enterprises in each country (Continued)

Country	Thailand	Cambodia	Laos	Vietnam	Bangladesh
National plan	The Economic Stimulus Package, 1999	First Five Year Socioeconomic Development Plan 1996-2000	Vision of 20 Years National Socio-Economic Development Plan 1996-2000	Vietnamese five-year plan for social economic development 1996-2000	The Fifth Five Year Plan 1997-2002
Plan for development of small and medium enterprises	Master Plan of Small and Medium Enterprises Development, 1999	Covered by the Industrial Plan and Actions 1998-2003	None. But, a policy for small and medium enterprise development is now under study by the Department of Industry, Ministry of Industry and Handicraft.	There is no official one. JICA has submitted the "small and medium enterprise development plan" to Vietnamese government, and UNIDO also submitted a separate proposal.	None
Organization in charge of policy for small and medium enterprises	The Bureau of Industrial Promotion Policy and Planning, Ministry of Industry. But, it might become independent as the Agency for Small and Medium Enterprise after a law concerning small and medium enterprise is enacted.	Small Scale Industry and Handicraft Section, Ministry of Industry, Mines and Energy	Department of Industry, Ministry of Industry and Handicraft	The Ministry of Planning and Investment of the Ministry of Industry. MPI has been studying a policy. MOI assumes ambiguous attitude toward the matter.	Ministry of Industry Bangladesh Small and Cottage Industries Corporation
Civil law	Civil and Commercial Code (CCC)	Drafts of a civil code and a civil procedure law are being prepared assisted by specialists of JICA.	Civil laws will not be lumped under a single civil code. Individual law for each area, such as a law of succession, a family law, a contract law, a law of non-contractual obligations, will be established.	Adopted by the Parliament on October 28, 1995 and enforced on July 1, 1996	Law of Specific Relief, Law of Trust, Law of Transfer of Property, Personal Laws
Commercial law		A draft is under preparation. In the area of commercial law, the Directive 241 of February 28, 1996 stipulates to adopt common law (Anglo-American law).	Secured Transaction Law (1994), The Decree on Checks (1996). Recently, there is an argument that, other than (civil) contract laws, the commercial transaction law shall be consolidated.	Adopted by the Parliament on May 10, 1997 and enforced on January 1, 1998	Law of Contract, Law of Sale of Goods, Law of Negotiable Instrument
Company law	There is the Public Limited Companies Act 1992 (a revision of the Act of 1978) for publicized companies (planned ones included) other than CCC. In Thailand, there are three types of enterprises, 1) Private Limited Company, 2) Public Limited Company, and 3) Partnership. The types 1) and 3) are established based on the provisions of the Civil and Commercial Code, and the type 2) based on the Public Companies Act.		Already consolidated as the Business Law (1994)	The Law on Enterprise, which unified (replacing the existing Law on Company, Law on Private Enterprise) laws stipulating limited liability companies, limited partnership corporations, partnership enterprises, private enterprises, was enacted, and published on July 2, 1999 and enforced from January, 2000.	The Companies Act 1994 (an amendment of the Companies Act 1913), Law of Partnership

Labor law	The Labor Protection Act, published on February 20, 1998 and enforced 180 days later.	Adopted by the Parliament on January 10, 1997 and enforced on March 13, 1997. There were labor laws established in 1972 and 1992, and the draft was prepared by unifying old laws and regulations and newly enacted in accordance with the establishment and enforcement of the new constitution in September 1993. About two years were needed for preparation of the draft and supports by France, the United States of America and ILO were given.	The Labor Law, published in April 1994 and enforced 60 days later.	The Labor Law enacted in 1994. Amendment is planned.	Labor Laws
Bankruptcy law	Enforced since 1940. 1998 1999 Comprehensive amendment Five laws concerning bankruptcy were established (Amended Bankruptcy Law, Law concerning Establishment of Bankruptcy Court, Amended Law concerning Summary Bankruptcy Procedures, and two Amendments of Law concerning Exercise of Security Right)	Not yet consolidated.	The Law on Enterprise Bankruptcy (1994)	The Law concerning Enterprise Bankruptcy, enacted in 1993. Amendment is planned.	
Social security law	Social Security Act 1990	A draft is under preparation.	There is a chapter for Retirement Pension in the Labor Law.	It is planned to establish a social insurance system.	
Intellectual property law	The Patent Act 1992. Petty patent system was established in 1999 by amending the Patent Act. The Trademarks Act 1991. The Copyright Act 1994. An independent law will be established for trade secret.		Trademark Decree (1995)	The volume 6 of the Civil Law stipulates intellectual property right (copyright and industrial property right) and technology transfer.	
Antimonopoly law	Law of 1979 concerning price control and antimonopoly was divided with certain amendments into the Law concerning Merchandise and Service Price and the Law concerning Transaction and Competition. Published in March 1999 and enforced in April.			Not yet consolidated (but, a plan exists.)	
Registration law	CCC, Land Code (1954). Registration of land is handled by Land Agencies of prefectures. The Ministry of Commerce is in charge of commercial registration.				The Law of Registration. Commercial registration is stipulated in the Companies Act.
Commercial dispute settlement law	Arbitration Act 1987		The Decree on the Resolution of Economic Disputes (1994)		

Small and medium enterprise law	None. But, SME Promotion Act is now under deliberation by the Parliament. This will become the Small and Medium Enterprise Basic Law, if enacted.	None. There are requests to establish one. The Factory Law 1995 covers medium enterprises.		One based on the Prime Minister's Decree is under study.	None.
Accounting system	The accounting standards have been already consolidated.	The French accounting system has been partially adopted.	The accounting standards have been already consolidated.	The accounting standards have been already consolidated.	The accounting standards have been already consolidated.
Corporate tax	The standard tax rate 30%	The standard tax rate 20%	The standard tax rate 35% (20% for joint venture with foreign capital)	The standard tax rate 25%	The standard tax rate 40% (35% for listed enterprise)
Income tax	Progressive taxation	Progressive taxation	Progressive taxation (Preferential tax rate 10% for foreign engineer)	Progressive taxation	Progressive taxation
Customs duty	Present	Present	Present	Present	Present
Value-added tax	10% (Monthly declaration, and payment)	10% (Introduced in 1998)	It is planned to change the turnover tax into the value-added tax.	5, 10 and 20% (Introduced in 1999)	15%
Remarks	Japanese-type legal regulations have been under consolidation. Also, legal regulations with respect to Small and Medium Enterprises, Japanese-type system and structure is under consolidation based on Mizutani proposal.	After confusions, legal regulations have been established receiving supports from international organizations and advanced countries. However, since it was carried out too hurriedly, it is like a patchwork and many inconsistencies and oversights are observed. Consolidation of legal regulations, which take small and medium enterprise development into consideration, will take quite some time.	Although it is very slow progress, legal regulations have been implemented with assistance from international organizations and advanced countries. However, it is still in the stage of consolidating basic laws and consolidation of legal regulations, which take small and medium enterprise development into consideration, will take quite some time.	Aiming at shifting to market economy, legal regulations have been implemented with assistance from advanced countries. However, only very slow progress has been made due to vertical administrative structure of the Ministries and their attitude of securing concessions. As for a policy for small and medium enterprise development, although JICA proposal was submitted, its future cannot be foreseen.	There are clear and well-organized legal regulations (it is not necessarily based on statutory laws as common law system prevails). However, due to lack of strong initiative of the central government, the legal regulations are not properly implemented and, therefore, they have not yet brought results.

4-2 General trends

With respect to the Central and Eastern European countries including Balkan countries, the most important and urgent topic is the EU membership and, therefore, amendments of laws in accordance with the EU Directives are the major prerequisites. In the process of enacting laws and taxation systems, therefore, there is no chance for Japanese to get involved in and, in fact, enactment of major laws concerning enterprises has been already completed not only in Poland, which is the first candidate for negotiations for the EU membership, but also in Bulgaria, which is to some extent behind in this respect.

On the other hand, it is true that there is weakness in implementation. For example, as seen from the fact that the Bulgarian commercial law has been amended more than ten times in the past 8 years, we cannot say that government officers, who are engaged in the implementation on the actual spots, get hold of the new system and problems lie on piles in implementation of laws. In addition, since the EU Directives are based on laying stress on the market mechanism, it has been playing a leading role for correction of unfair competitions of giving preferences to large enterprises under the socialism age in the past which resulted in disadvantages to small and medium enterprises and a ~~Level Playing Field~~ in a sense has been consolidated. On the other hand, however, it is true that programs that give preferences to small and medium enterprises are not welcomed by the EU from a viewpoint that they are distorting the market. Therefore, it can be said that it is a unique feature that the governments have been obliged to compromise to some extent, in order to join the EU, in a way to postpone implementation, although the governments of both countries have intentions to establish various development systems to foster small and medium enterprises. In reality, since the ~~Level Playing Field~~ cannot be formed by just leaving the matter to the market function, policies for small and medium enterprises exist in the EU countries, but, in those countries which have been waiting for the EU membership, they cannot have a room to carry out such adjustment.

With respect to Asian countries, in Indonesia, Malaysia, Thailand and Philippines, which are members of the ASEAN since the establishment, consolidation of basic laws has been completed. For example in Indonesia and Thailand, however, re-consolidation of economy laws, such as bankruptcy laws and antimonopoly laws, has been carried out after the Asian economic crisis under the guidance of international organizations such as the World Bank and IMF. Although enactment of those laws was completed, however, there is little chance for effective enforcement of those laws and, especially in Thailand, it is reported that the re-amendment of the amended bankruptcy law has been started.

Furthermore, with respect to middle-level laws and enforcement regulations (enforcement laws) such as laws for promotion or enforcement which play a role of adjusting or supporting the strategy, further consolidation is needed, and the supporting system for implementation of laws and regulations has not yet been well consolidated. For example, econometrics model to support the establishment of a macro economic policy, small and medium enterprise information database to support the small and medium enterprise policy, the knowledge management system to support

small and medium enterprise development and a database of cases (judicial precedents) can be considered.

With respect to Laos, Vietnam and Bangladesh, consolidation of basic laws such as civil and commercial laws has been complete and, for the future, the tasks could be enrichment of their contents and reinforcement of system for enforcement. Although modern civil and commercial laws have been consolidated, however, the phenomenon that old regulations based on socialism still exist is observed. Furthermore, with respect to a series of other legal systems which support small and medium enterprise development, many omissions and inconsistency are observed there under the conditions of patchwork-like formation and, therefore, it can be said that it is still far from the situations where small and medium enterprise development can be satisfactorily carried out. From organizational point of view for small and medium enterprise development and in Ministries which are in charge thereof, the situations do not allow to make a plan for long-term small and medium enterprise development due to lack of experience, personnel and funds.

In Cambodia, even consolidation of basic laws has not yet been started. Distorted situations are observed in that the commercial law is based on Anglo-American laws (Common Law) as a fixed policy on one hand and, on the other, drafting of civil and civil procedure laws has been carried out by JICA specialists of Japan, which adopted the Continental legal system (however, not mentioning the actual state of implementation, the Civil Code was enacted on 1920 while Cambodia was a colony). Although, in these modern days, it is common to have statutory codes in the area of company laws and commercial transaction laws even in countries where Common Law prevails such as the United States and the differences between Civil Law and Common Law have become smaller, it is concerned that there remains problems in implementation.

4-3 Central and Eastern Europe

4-3-1 Poland

4-3-1-1 Already consolidated legal system (Relation with the EU Directives and EU Regulations)

Based on the governmental economic program (the so-called ~~Mal~~ Balcerowicz Program) which was announced in 1989, Poland has continued efforts aimed at the abolition of central control, introduction of a market economy, price liberalization, privatization of national enterprises, dissolution of monopolies, introduction of the principle of competition, trade liberalization, abolition of various regulations, abolition of subsidies, consolidation of the capital and financial markets, etc. At the same time, Poland has carried out the consolidation of laws which provide a basis for policies for introduction of a market economy and liberalization. As a result, it can now be said that the legal system that constitutes the framework of the new society has been almost completed.

In this great development of the legislation, great efforts have been directed at incorporating the unique history, traditions and sense of values of Poland into the legal system, and it is said that the new constitution which was enacted in 1997 harmonizes the balance between the “ international standardization of Polish laws” and the “ traditional sense of values of the Polish nation. ” Article 20 of the new constitution stipulates that “ a social market economy, based on freedom of economic

activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland, ” and thereby presents a unique concept of social market economy.

In Poland, free economic activity is guaranteed while laws prevent unfair competition and monopolistic practices, and private ownership is completely protected by the constitution, civil laws and commercial laws. Furthermore, intellectual property rights such as trademark rights, copyrights, and patent rights are protected.

THE CONSTITUTION OF THE REPUBLIC OF POLAND

Article 20

“ A social market economy, based on the freedom of economic activity, private ownership, and solidarity, dialogue and cooperation between social partners, shall be the basis of the economic system of the Republic of Poland. ”

Following this provision, the right of ownership is stipulated as follows:

Article 21

1. The Republic of Poland shall protect ownership and the right of succession.
2. Expropriation may be allowed solely for public purpose and for just compensation.

The names and opening provisions of main laws contained in the statute book (English translation) are shown below.

(1) Civil and commercial law/company law
ACT of 23 April, 1964 THE CIVIL CODE

[Article 1.] This Code regulates civil law relationships between natural persons and legal persons.

REGULATION BY THE PRESIDENT OF THE REPUBLIC OF POLAND of 27 June 1934, THE
COMMERCIAL CODE

[Article 5.] 1. A commercial company or partnership is a registered trader.
2. Registered partnerships, limited partnerships, limited liability companies and joint-stock companies shall be commercial partnerships and companies.

(2) Bankruptcy law
REGULATION BY THE PRESIDENT OF THE REPUBLIC OF POLAND of 24 October 1934,
BANKRUPTCY LAW

[Article 1.] 1. An entrepreneur who has ceased to pay debts shall be declared bankrupt.
2. An entrepreneur, being a legal person, and a registered partnership and limited partnership in liquidation shall be declared bankrupt also in cases where their estate is not sufficient to satisfy the debts.

REGULATION BY THE PRESIDENT OF THE REPUBLIC OF POLAND of 24 October 1934,
ARRANGEMENT PROCESSING LAW

[Article 1.] An entrepreneur who, owing to exceptional circumstances and those beyond his control, has ceased to pay debts or foresee their payment to be ceased in the nearest future, may demand the opening of proceedings for an arrangement with creditors.

(3) Labor law

ACT of 26 June 1974, THE LABOUR CODE

[Article 1.] The Labour Code shall define the rights and duties of employees and employers.

(4) Competition law/antimonopoly law

ACT of 24 February 1990 ON COUNTERACTING MONOPOLISTIC PRACTICES

[Article 1.] This Act shall determine the conditions of development of the competition, govern the principles and procedures for counteracting monopolistic practices, and infringements of the interests of consumers by entrepreneurs and their combinations, if they cause or may cause effects within the territory of the Republic of Poland, and shall specify authorities competent in such cases.

ACT of 16 April 1993 ON SUPPRESSION OF UNFAIR COMPETITION

[Article 1.] This Act shall regulate prevention and suppression of unfair competition in economic activity and, in particular, in industrial and agricultural production, in the building industry, trade and services in the interests of the public, entrepreneurs and customers, and the consumers in particular.

ACT of 23 December 1988 ON ECONOMIC ACTIVITY

[Article 1.] Everyone shall be allowed, on equal terms, to undertake and perform an economic activity freely, on fulfilling the conditions defined by the provisions of law.

(5) Intellectual property law

ACT OF 4 February 1994 ON COPYRIGHT AND NEIGHBOURING RIGHTS

[Article 1.] The subject matter of copyright shall be any and all manifestation of creative activity of individual nature, established in any form, irrespective of its value, designation or manner or expression (work).

(6) Others

ACT of 25 September 1981 ON STATE ENTERPRISES

[Article 1.] A State enterprise is an independent, self-governing and self-financing entrepreneur having legal personality.

ACT of 30 August 1996 ON COMMERCIALISATION AND PRIVATISATION OF STATE ENTERPRISES

[Article 1.] 1. Commercialization, within the meaning of this Act, shall consist of transformation of a State enterprise into a company; unless the provisions of this act specify otherwise, such company shall succeed to all legal relations, of which the State enterprise has been a subject, regardless of the legal nature of those relations.

2. Privatization, within the meaning of this Act, shall consist of;

1) a transfer of shares owned by the State Treasury in companies established as a result of commercialization.

2) a disposal of all tangible and intangible assets of a State enterprise or a company established as a result of commercialization in accordance with the principles specified by this Act in the form of;

a) a sale of the enterprises;

b) contributing an enterprise to the company;

c) giving an enterprise to be used for consideration.

ACT of 12 November 1965 ON PRIVATE INTERNATIONAL LAW

[Article 1.] 1. This Act sets out the law governing international personal and property relations within the scope of civil, family and guardianship, and labor law.

2. The provisions of this Act shall not apply where an international treaty to which the Republic of Poland is a party provides otherwise.

In addition,

Companies with Foreign Shareholdings Act

National Investment Funds and Their Privatization Act

Real Estate Acquisition by Foreigners Act

Regulation on Contracts for Sale of Movables to Consumers

Protection of Business Dealings Act

Economic Matters Hearing Act

Foreign Exchange Law Act

General Foreign Exchange Permits Order

Banking Law Act

Bonds Act

Natural Person's Income Tax Act

Legal Person's Income Tax Act

Goods and Services Tax and Excise Duty Act

Fiscal Control Act
Insurance Activity Act
Cooperative Law Act
Communications Act
Geological and Mining Law
Crafts Act
Public Contracts Act
Accounting Act
The Customs Act
Public Trading in Securities Law Act
Tax Ordinance Act

4-3-1-2 Problems arising in enforcing legislation

Among former socialist economic system countries in Central and Eastern Europe, Poland was one of the few countries which maintained a culture of rule of law even while belonging to the Soviet political and economic bloc. Functions of courts and judiciatures had been rather well maintained and respected.

Although this contributes to development of the civil society, however, there is the ironic phenomenon that this existing system sometimes hinders promotion of reforms. For example, in order to consolidate complicated laws like pledge laws, the necessity of adapting them to the existing legal system is very high. In such case, it is not always appropriate to assign drafting of laws to foreign specialists, and, on the other hand, domestic specialists lack experiential knowledge of business practice in developed countries.

In December 1996, Poland enacted a law concerning the registered pledge and the pledge registry (the Law of 6 December 1996 on the Registered Pledge and the Pledge Registry). This was achieved by the civil code reformation committee of the Polish Ministry of Justice, with assistance from USAID (United States Agency for International Development) through IRIS (Institutional Reform and the Informal Sector, University of Maryland at College Park). In this case, IRIS adopted the method whereby together with financial and organizational assistance to Polish specialists arrangements were made so that the Polish specialists could have as much contact as possible with international specialists. Due to such considerations, the new law, which can be called 100% Polish made, was instituted so that it can function within the framework of the Polish Civil Code, Code for Civil Procedure and Banking Act.

On the other hand, however, there is a criticism that developments in North American laws concerning transactions with pledge have not been incorporated into this new law. In the background of the process of the enactment of this law, however, there was the unsuccessful example of the efforts of the World Bank. The World Bank once proposed a draft law concerning transactions with pledge. This draft was prepared by specialists in London and it was drafted with the aim of establishing a system which had effectively functioned in the United States based on the

UCC, Vol. 9 concerning transactions with pledge. This system perfectly suits transactions with pledge in advanced countries in Western Europe, however, it was not devised taking the Polish legal system into consideration.

Due to this fact, this draft could not be accepted by the National Bank of Poland and other concerned parties. Although it had many advantages, generally speaking, it was too complicated to enforce in Poland as it was not drafted in the framework of the structure of the Polish Civil Code and the juristic traditions in Poland were not taken into consideration.

At present, the biggest challenge for Poland is to officially join the EU (European Union). Therefore, a middle term objective for Polish legislation is basically to adapt it to EU standards. In this case, since EU legislation is based on a highly advanced and complicated social and economic basis, the above-mentioned problem is encountered.

(The above is based on “LAW IN TRANSITION,” Summer 1997, issued by EBRD. By the way, it is stated in the same publication that “The new law levels the playing field and does away with many of these aberrations.”)

[Reference]

[Problem of joining the EU in Eastern European countries]

Accompanying the collapse of the socialist system in Eastern European countries in 1989, the problem of Eastern European countries joining the EU arose. The EU concluded union agreements with Poland, Czechoslovakia (at that time) and Hungary in December 1991 and with Rumania and Bulgaria in December 1992. As these agreements are based on the assumption that those countries will join the EU in the future, they are also called the European Agreement and their contents are not limited to economic relationships, but cover broad areas such as politics, culture, and laws. The Maastricht treaty, which was signed in February 1992, aims to deepen the unification of Europe and, at the same time, to provide for enlargement of the EU in the future, especially regarding Eastern Europe.

In the EU top-level meeting held in Copenhagen in June 1993, the standards for membership of Eastern European countries in the EU were decided, and in the Essen meeting in December 1994, it was agreed to consolidate the support for candidate countries for EU membership. The Eastern European and Baltic countries which concluded the European Agreement have officially applied to join the EU, beginning with Hungary in March 1994. In July 1997, the EU selected Poland, the Czech Republic, Hungary, Slovenia, Estonia and Cyprus as the first group for negotiations concerning EU membership. Those countries started working-level negotiations with the EU in March 1998.

4-3-1-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Polish accounting standards

Although Poland has started to introduce the international accounting standards, there still remain many differences. Differences relating to small and medium enterprises can be seen in the table below, and all Polish enterprises including large-sized enterprises follow the Polish accounting standards. (Depending on size, there are three different types of stock market in Poland, each of which has its own initial listing requirements. Therefore, consideration is given to cash flow statements and consolidated accounting which appears applicable to large-sized enterprises. Separately from those markets, there is a market for over-the-counter transactions.)

	International Accounting Standards	Polish Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Appraisal with the lower-of-cost-or-market method No provisions
Accounts receivable	Estimated uncollectable bad debts are accounted for.	Estimated uncollectable bad debts may be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life	Reevaluated current price Depreciation in accordance with decision by the Ministry of Finance
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on number of years of effectiveness. Depreciation in accordance with decision by the Ministry of Finance
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	To be based on consolidated accounting.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency is not accepted.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes may be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Accounting for pension plan and leasing is under study.

(2) Impact differences might have on accounting practice

Adopting the market value method for appraising tangible assets is the accepted method. As a result, in addition to the burden of surveying the current price of fixed assets every year, cost accounting accuracy is a concern due to the difficulty in estimating depreciation expenses caused by the fact that it is difficult to predict how the price of each fixed asset will fluctuate every year due to the inflationary tendency in recent years.

Furthermore, as personnel expenses of medium enterprises cannot be considered accurate unless an accounting pension plan is introduced, the profit or loss of a specific year cannot be reported correctly and, as a result, the financial status forecast for subsequent years becomes erroneous.

4-3-1-4 Current state of abiding by the accounting standards at enterprise level and points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital and, because of the necessity of reporting the accounting to the home country of such foreign capital, the Polish accounting standards are not necessarily followed. From a taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms.

On the other hand, if the number of employees is 50 or more, or total assets equal one million Zlotys or more, or yearly sales equal three million Zlotys or more, even small enterprises are obliged to get audited.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms, and accounting firms usually give guidance in preparing the accounts based on the Polish accounting standards. They prepare tax returns for such enterprises based on such accounts and, in this respect, play a major role.

On the other hand, as small enterprises, which are not obliged to get audited, do not utilize the services of accounting firms, accounting firms have hardly any role in this area.

4-3-1-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Other than tax laws, there are Decrees and Circulars and the enforcement of the system has been improved. Because of the socialist economic system, the organization of taxation offices is not taxpayer-oriented, and there is no concept of careful protection to foster small and medium enterprises, and, therefore, there is no small and medium enterprise specific preferential taxation system. There are 45 taxation offices in the Warsaw district alone.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, in the case of joint venture enterprises with foreign capital (with a certain amount of initial

investment or a certain number of Polish employees) in 17 special economic areas, corporate income tax (the standard corporate income tax rate is 32%) is exempted for ten years, and for a further ten years the tax rate is reduced by 50%. Enterprises with yearly sales of 80 thousand Zlotys or less are exempted from the obligation of reporting value-added tax.

(3) Actual state of tax examination

In many cases of tax examination, the taxable income is calculated based on submitted tax returns in accordance with the provisions of tax laws and the tax amount is settled accordingly. As persons in charge of tax examination did not have a thorough knowledge of taxation business, great confusion prevailed at the time of introduction of value-added tax.

Revenue from duties paid by foreign legal persons is still more important than tax revenues from corporate income tax and personal income tax.

4-3-1-6 The present state of the policy for small and medium enterprises and the points at issue

Poland's policy for small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan		
Small and medium enterprises development plan	Government Policy Guideline for Small and Medium Enterprises until 2002	
Organization in charge of policy	Department of Craft, Small and Medium Enterprises, Ministry of Economy	
(1) Small and medium enterprise law	None	The Economic Activity Law defines Small and Medium Enterprises
(2) Consolidation of management basis		
1) Financial measures		Although there is no financial institution created by policy specifically for small and medium enterprise, financing for small and medium enterprises is carried out with credit protection under the Coal Industry Structure Adjustment Act and through financial institutions created by policy such as the Agency of Industry of Development, etc.
2) Taxation system measures		Although there is no small and medium enterprise specific preferential taxation system, there are certain preferential items in relation to investment and export promotion.
3) Organizing measures	Polish Chamber of Commerce Small and Medium Enterprises Association	The Polish Chamber of Commerce is the central organization and there are regional chambers of commerce and various trade organizations. The Small and Medium Enterprises Association is one of the members of the former.
4) Fair trade promotion measures	Counteracting Monopolistic Practices Act 1990 Suppression of Unfair Competition Act 1993	
5) Coordination measures by business fields		There are structure adjustment plans and laws such as the Coal Industry Structure Adjustment Act
6) Measures for ensuring demand from public offices	There is a regulation concerning purchases by the public sector from domestic enterprises	
7) Bankruptcy prevention measures	Bankruptcy Act 1934	
(3) Supporting structural reforms		
1) Corporate management reform support measures	Management guidance and seminars are given by chambers of commerce etc.	

2) Support measures for new business startup, etc.		There is a venture fund.
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		Implemented in relation to regional development
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor Code 1974	The Labor Code is a generic one and there is no small and medium enterprise specific provision.
11) Energy and environment measures		The World Bank's environment protection fund is utilized.
12) Internationalization measures		
(4) Small-scale business measures		Provided by the Coal Industry Structure Adjustment Act NGO
(5) Other measures		

(1)The industrial structure and small and medium enterprise sector in Poland

In Poland, GDP was 135,659 million US dollars (1997, World Bank " Report on World Development, " 1998/99) and the value-added component ratio was 6% for the agricultural sector, 39% for the industrial sector and 55% for service industries. (ibid)

According to the " Report on the Condition of the Small and Medium Enterprise Sector in Poland for the Years 1997-1998, 1999, the value-added component ratio for the small and medium enterprise sector is 51.5% and the employment absorption ratio is 61.6% (1997).

Statistics on small and medium enterprises in Poland

Classification of enterprises	Number of enterprises	%
Small enterprises (number of employees 0 to 50)	1,567,413	98.98
Medium enterprises (number of employees 51 to 250)	12,774	0.8
Sub-total	1,580,187	99.78
Large enterprises (number of employees 251 or more)	3,419	0.22
Total	1,583,606	100.00

Source: Active Enterprises (excluding financial intermediaries and budgetary units) in 1997 according to number of employees from " Report on the Condition of the Small and Medium-Size Enterprise Sector in Poland for the Years 1997-1998

According to the Small and Medium Enterprise Department, the Ministry of Industry, there were about 2.5 million small and medium enterprises and they occupied 99% of the total number of enterprises. (12/20/99 survey by interview by the Small and Medium Enterprise Department. According to the " Report on the Condition of the Small and Medium Enterprise Sector in Poland for the Years 1997-1998, " the number of enterprises registered to REGON: National Register of Economic Entities, excluding agricultural and fishery businesses and financial businesses, was 2,493,623, including 60,091 municipal enterprises. As there are dormant enterprises, however, the number of enterprises which are actually carrying out corporate activities is the above mentioned 1,583,606.)

There are two sides to Poland's industrial policy: one concerns structural adjustment to shift from a socialist planned economy to a free market economy, and the other concerns preparations for joining the EU and the development of industries within the framework of the EU after joining. With respect to the structural adjustment, the biggest task is adjustment of industries affected by the economic recession such as the coal and shipbuilding industries etc. The second task concerns privatisation of State enterprises. Although certain progress has been achieved in the privatisation plan, it has not yet been completed.

There are three types of enterprise in the small and medium enterprise sector, namely, privatised ex-State enterprises, small and medium enterprises established by private entrepreneurs and small and medium enterprises which are joint-ventures with foreign capital. Among these three types, the development of enterprises established with foreign capital and accompanying supporting industries is marked. But, supporting industries (ex-State enterprises and small and medium enterprises established by private entrepreneurs) have not yet developed enough to supply parts which are acceptable in quality and quantity to assembly manufacturers which have set up in Poland. (From an interview with JETRO on 12/21/99)

With respect to the task of joining the EU, placing EU membership as its top priority the Polish government has been rapidly consolidating the related legal regulations and taking urgent measures. Therefore, the legal regulations, including the Commercial Code that stipulates the field of commercial activities of small and medium enterprises, have been consolidated in accordance with the EU standards, and long and medium-term industrial policy and development of small and medium enterprises have tended to receive only secondary consideration.

The basic idea of the EU regulations is not to separate small and medium enterprises from large enterprises as a general rule, and to let them compete freely without government intervention. In order to join the EU, the Polish government has been consolidating laws which adopt this idea extensively. Accordingly, the Polish government, for the time being, has no intention of enacting the Small and Medium Enterprise Basic Law, which gives specific protection to small and medium enterprises. (12/20/99 Ministry of Economics)

(2) Policy for small and medium enterprises

The Polish government (the Ministry of Industry) believes that, due to the existence of the special

law regarding structural adjustment of the coal industry and the fund for policies for development of industries and so on, it is possible to implement the policy for small and medium enterprises through the combination of such existing legal systems even without providing the Small and Medium Enterprise Basic Law. However, it feels that an organization which plays a core role in implementing policies for small and medium enterprises is necessary, and the Department of Craft, Small and Medium Enterprises was established in the Ministry of Industry and development policies have been implemented under the initiative of this Department.

In addition, the Economic Activity Law approved by the Cabinet in 1998 defines small and medium enterprises and stipulates the policies for protection focusing on small enterprises. Although the Economic Activity Law itself was not available when this survey was carried out as it was in the final study stage in Parliament, its draft, the Draft Law on Business Activity, stipulates the definition of small and medium enterprises as follows:

Small enterprise: Enterprise with less than 50 employees, profit less than 7 million ECU or total assets less than 5 million ECU.

Medium enterprise: Enterprise with less than 250 employees, profit less than 40 million ECU or total assets less than 27 million ECU.

This Draft Law also mentions the following concerning small and medium enterprises

Consolidation of laws including financing and credit protection

Establishment of funds for financing and credit protection

Establishment of facilities for providing information, training and management technology advice

Establishment of supporting organizations for small and medium enterprises

Although there is no basic law, the “ Government Policy Guideline for Small and Medium Enterprises until 2002 ” was issued on May 11, 1999 as a Cabinet Ordinance. Although the effective period of this Ordinance is limited to until 2002, it stipulates the framework of the policy for the development of small and medium enterprises and the budget therefor in place of the Small and Medium Enterprise Basic Law.

This Ordinance picks up the following three items as the objectives of small and medium enterprise development and stipulates the policies for those objectives:

To strengthen the competitiveness of the small and medium enterprise sector

To increase exports by small and medium enterprises

To expand investment in small and medium enterprises

The following policy tools can be utilized for the development of small and medium enterprises:

1) Credit protection

A special law concerning structural adjustment of the coal industry has been established. In the law it is stipulated that (1) local self-governing bodies shall carry out structural adjustment by utilizing special funds, (2) social assets (national assets) shall be utilized, and (3) liabilities shall be guaranteed. With respect to the guaranty by the National Government, businesses in the area of (1) establishment and mending of infrastructure, (2) export promotion, (3) environmental conservation, (4) structural adjustment and (5) new technologies can be covered, and this guaranty by the National Government is classified into three levels. The highest level guaranty is for large-scale enterprises (amount exceeding 50 million ECU) and the National Government provides the guaranty. The middle level guaranty is for medium-scale enterprises (from 500 thousand to 50 million ECU) and the Minister of Finance provides the guaranty. The lowest level guaranty is for small and medium enterprises (not exceeding 500 thousand ECU) and local housing banks (nationally owned) provide the guaranty. The amount of guaranty ranges from 0.2% to a maximum of 2%. Credit protection for financing small and medium enterprises can be given utilizing this system.

2) Direct financing (domestic)

Furthermore, with respect to direct financing, there are governmental funds and organizations which can be utilized for development of small and medium enterprises (or rather, policies for development of industries in general) and some of them receive financial assistance from international organizations such as the EU. By utilizing such funds, it is possible to carry out (1) restructuring, (2) support for small and medium enterprises, (3) securitization transaction of debts, (4) investment in enterprises for which stock market financing is difficult and (5) technical support. As such organizations are of a similar nature to financing institutions created by policy rather than governmental organizations, they can be utilized for direct financing for small and medium enterprises. Among such investment-related organizations, the biggest one is the Agency of Industrial Development and it has executed several investments in the form of stock ownership. It owns stocks and has gained profits by selling stocks of profit-making enterprises. Furthermore, it gives not only direct financing to small and medium enterprises but also management technology support such as establishment of business plans.

Secondly, there is an organization which promotes technological innovation using governmental funds, and its objective is especially to support small and medium enterprises. It provides financial support relating to introduction of technology.

There are also organizations that manage and control real estate, and the Polish Government deem them tools for supporting small and medium enterprises, one example being the Agency of Restructuring and Modernization of Agriculture. Those governmental organizations carry out support for small and medium enterprises by securing funds by selling national assets such as state

farms that are still owned by the government, and allocating such funds for supporting the development of industries. The Ministry of Defense also sells unnecessary assets and supports development of small and medium enterprises which are related to the defense industry.

The role of the Ministry of Industry's Industrial Planning Department is to put separate budgeted government funds together to achieve policy objectives, and it is considered that support by direct financing is to be left to other organizations. However, the Ministry of Economics itself has several different funds which are actually used for structural adjustment of the coal industry etc. Such funds can also be utilized for development of small and medium enterprises depending on the case.

3) Foreign assistance

In the case of Poland, much of the assistance from foreign countries can be utilized for development of small and medium enterprises. For example, the EU has been providing financial support to the fund for development of small and medium enterprises. The use of this fund is limited mainly to small and medium enterprises which are engaged in export promotion and the interest rate is not much different from market interest rates and, therefore, the EU does not deem it problematic.

Where development of small and medium enterprises is related to preservation of the environment, support from the environment protection fund of the World Bank is possible and the World Bank is also providing funds for regional promotion. Development of small and medium enterprises related to regional promotion is carried out within the framework of structural adjustment as a general rule, and the Polish government bears 50% of the costs for this purpose and the remaining 50% is provided by the EU and the World Bank.

At present, there is no preferential treatment for small and medium enterprises regarding government procurement, and the same conditions as those for large-sized enterprises are applied for small and medium enterprises. The Polish government believes that it is necessary to devise a strategy under which, setting aside medium enterprises, small enterprises can participate in tendering and thereby lead to development of small and medium enterprises.

As explained above, even if there is no Small and Medium Enterprise Basic Law, there are various tools which can be utilized for development of small and medium enterprises, and the policy for small and medium enterprises can be managed until 2002 based on the Government Policy Guideline for Small and Medium Enterprises until 2002, and, therefore, it is considered that there are no major problems in the area of legal regulations.

4-3-1-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

In the case of Poland, the economic conditions function beneficially and they give favorable support to the development of small and medium enterprises. Firstly, as the scale of the domestic market is larger than those of neighboring Eastern European countries and the country is geographically close to Western markets such as Germany, foreign investment which considers both the domestic and foreign market has been increasing remarkably.

Furthermore, as joining the EU is almost decided and is in the final adjustment stage, there is a trend of accelerated investment.

Therefore, it seems that the encouragement of supporting industries as the mid- and long-term policy for small and medium enterprise development will become the next task after adjustment of the industrial structure is completed. However, since tools including foreign assistance, which can be utilized for development of small and medium enterprises, are present in abundance and the consolidation of laws in accordance with the EU standards is progressing rapidly, as the Polish government itself also acknowledges, support from Japan for the consolidation of the legal system is not required.

4-3-2 Bulgaria

4-3-2-1 Already consolidated legal system (Relation with the EU Directives and EU Regulations)

Since the enforcement of the new constitution in July 1991, Bulgaria has been trying to consolidate laws and regulations to make them comply with international legal standards such as the EU Directives and the Conventions of the United Nations.

With respect to economic activities, the Article 19 of the constitution stipulates as follows:

Art. 19.

- (1) The economy of the Republic of Bulgaria shall be based on free economic initiative.
- (2) The State shall establish and guarantee equal legal conditions for economic activity to all citizens and corporate entities by preventing any abuse of a monopoly status and unfair competition, and protecting the consumer.
- (3) All investments and economic activity by Bulgarian and foreign persons and corporate entities shall enjoy the protection of the law.
- (4) The law shall establish conditions conducive to the setting up of cooperative and other forms of association of citizens and corporate entities in the pursuit of economic and social prosperity.

The right of ownership is stipulated as follows:

Art. 17.

- (1) The right to property and inheritance shall be guaranteed and protected by law.
- (1) Property shall be private and public.
- (2) Private property shall be inviolable.
- (3) The regime applying to the different units of state and municipal property shall be established by law.

- (4) Forcible expropriation of property in the name of state or municipal needs shall be effected only by virtue of a law, provided that these needs cannot be otherwise met, and after fair compensation has been ensured in advance.

With respect to laws concerning enterprises, in addition to consolidation of the Company Law, the Commercial Transaction Law and the Insolvency Law, the Security Exchange Law was enacted in 1996 and security exchange was started. Consolidation of the commercial registration has progressed and the system for establishment of companies has been gradually established. Labor laws and intellectual property laws have been consolidated. In the past two years, in particular, adaptation to the EU standards was major concern and consolidation of laws concerning regulation of corruption, laws concerning government employee and the Mediation Law are included there.

A 3-step consolidation of laws was assumed and the first step, which was the short-term target, is for the period until 2000. For the second step, the mid-term target, 2005 is the targeted year. By the way, contract law etc. before entering into socialist regime was based on systems of France, Italy etc. and the commercial law was based on the German system.

(1) Commercial Code

The present Commercial Code was published in 1991, but has been amended every year frequently. It was already amended 19 times, once in 1992, twice in 1993, once in 1994, once in 1995, five times in 1996, three times in 1997, three times in 1998 and three times in 1999, and the frequency of amendments has increased especially in recent years.

It is obvious that the Commercial Code belongs to the Continental legal system, similarly to the Commercial Code of Japan, by the fact that traders, commercial registration, trade names, branch offices, commercial agents, books of account etc. are stipulated in the Part 1 “ General Part, ” and sole entrepreneurs, state-owned and municipal enterprises, general partnerships, limited partnerships, limited liability companies, joint stock companies are stipulated in the Part 2 “ Types of Merchants. ”

Differently from the Commercial Code of Japan, there is a provision for trade secret in the Part 1. Furthermore, there are provisions for bills of exchange, promissory notes and checks (cheques) in the Part 3. Provisions concerning applicable laws are also set. Provisions concerning license contracts for intellectual property rights are also seen. The Part 4 is for provisions concerning bankruptcy.

The main contents are as follows:

Part 1 General Part

Part 2 Types of Merchants

Division 1 Sole Entrepreneur

Division 2 State-Owned and Municipal Enterprises

Division 3 Companies

Chapter 11 General Partnership

Chapter 12 Limited Partnership

Chapter 13 Limited Liability Company

Chapter 14 Joint Stock Company

Chapter 15 Partnership Limited by Shares

Chapter 16 Transformation of Companies

Chapter 17 Liquidation

Chapter 18 Commercial Groups

Section 1 Consortium Definition

Section 2 Holding Company Definition

Chapter 19 Applicable Law

Part 3 Commercial Transactions

Chapter 22 Commercial Sale

Chapter 23 Leasing Contract

Chapter 24 Commission Merchant Contract

Chapter 25 Forwarding Contract

Chapter 26 Contract of Carriage

Chapter 27 Insurance Contract

Chapter 28 Contract for Current Account

Chapter 29 Banking Transactions

Chapter 30 Bill of Exchange

Chapter 31 Promissory Note

Chapter 32 Cheque

Chapter 33 Applicable Law on Bill of Exchange, Promissory Note and Cheque

Chapter 34 Deposit in Public Warehouse

Chapter 35 License Contract

Chapter 36 Contract for Commodity Control

Chapter 37 Applicable Law

Part 4 Bankruptcy

Chapter 38 General

Chapter 39 Instituting Bankruptcy Proceedings

Chapter 40 Effect of Ruling on Institution of Bankruptcy Proceedings

Chapter 41 Complementing of Bankruptcy Estate, Safeguarding Measures

Chapter 42 Authorities and Management of the Bankruptcy Estate

Chapter 43 Claiming Receivables

Chapter 44 Reorganization of The Enterprise

Chapter 45 Declaration of Bankruptcy

Chapter 46 Converting The Assets into Cash

Chapter 47 Distribution of The Assets converted into Cash and Completion of The Bankruptcy Proceedings

Chapter 48 Out of Court Settlement

Chapter 49 Specific Rules for Companies
Chapter 50 Resumption of Bankruptcy Proceedings
Chapter 51 Restoration of Debtor Rights
Chapter 52 Applicable Law

(2) Labour Code

The present Labour Code was published in 1986, but was frequently amended later similarly to the Commercial Code. It was already amended 26 times, once in 1988, three times in 1990, three times in 1991, four times in 1992, twice in 1995, three times in 1996, once in 1997, six times in 1998 and twice in 1999, and the frequency of amendments has increased especially in recent years. The opening provisions are shown below.

[Art. 1.] (1) The Code shall regulate the labour relations between the employee and the employer, as well as other relationships immediately related to them.

(5) Relations related to providing labour force shall be arranged as employment relations only.

(6) This Code shall aim to ensure the freedom and protection of labour, as well as equitable and dignified working conditions.

(3) Intellectual Property Law

LAW FOR PLANTS PROTECTION
LAW FOR THE COPYRIGHT AND RELATED RIGHTS
LAW FOR THE INDUSTRIAL DESIGN
LAW FOR THE MARKS AND THE GEOGRAPHIC NAMES
LAW FOR THE PATENTS
LAW FOR THE SPECIAL INTELLIGENCE DEVICES
LAW FOR THE TOPOLOGY OF THE INTEGRATED CIRCUITS

Other main laws contained in the statute book (English translation) are shown below.

CIVIL PROCEDURE CODE
LAW FOR PROTECTION OF THE CONSUMERS AND FOR THE TRADE RULES
LAW FOR ADDITIONAL VOLUNTARY PENSION INSURANCE
LAW FOR HEALTHY AND SAFE LABOUR CONDITIONS
LAW FOR SECURITIES, STOCK-EXCHANGE MARKETS AND INVESTMENT COMPANIES
LAW FOR THE CIVIL REGISTRATION
LAW FOR THE HEALTH ASSURANCE

4-3-2-2 Problems arising in enforcing legislation

As new market environment surrounding laws has been continuing rapid and substantial changes, it was difficult to set up a stable legal framework in enacting laws and, even after enactment, many

amendments are necessary urged by the change in economic situations. For example, the Commercial Code was amended more than ten times in last 8 years.

Furthermore, even if a law itself is enacted, its enforcement does not progress smoothly and administration is in confusion. For example, although the health insurance system is stipulated to start in 2000 by the law and citizens are obliged to start payment of premiums from July 1999, necessary cards have not yet been issued and printing itself has not yet been started.

Until the middle of September 1999, the President has signed the amendments of the Customs Law, the Accounting Law and the Law on the National Accounting Office. Further, for the Autumnal session, the Government will submit 32 bills to the Parliament and 11 bills among them are for amendment of existing laws and 21 are for new legislation.

Planned legislation for the period until the end of October 1999 includes laws for road transportation, railway transportation, mail and telecommunication committee etc. Amendments of the Commercial Code and the Law on Personal Taxation are also included in the bills.

Prime Minister, Kostov, stated that, among others, the law for small and medium enterprise, the cooperative association law, the law concerning land registration, the taxation procedure law, the information access law etc. will be perused by policy makers of the EU.

4-3-2-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Bulgarian accounting standards

Although Bulgaria has started to introduce the international accounting standards, there still remain many differences. Differences relating to small and medium enterprises can be seen in the table below, and all Bulgarian enterprises including large enterprises follow the Bulgarian accounting standards. (Since there is no security market, there are no standards for listing to the security market. Therefore, cash flow statement and consolidated accounting, which seem large enterprise will adopt, are not applicable.)

	International Accounting Standards	Bulgarian Accounting Standards
Inventory	Appraisal with the lower-of-cost-or- market method Unrealized profit from internal transfer price is deductible.	Appraisal with the lower-of-cost-or- market method No provisions
Account receivable	Estimated uncollectable bad debts are accounted for.	Estimated uncollectable bad debts may not be accounted for.
Tangible fixed asset	Cost or revaluated value Depreciation with estimated service life	Revaluated current price Depreciation in accordance with decision by the Ministry of Finance
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on number of years of effectiveness. Depreciation in accordance with decision by the Ministry of Finance
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	To be based on consolidated accounting.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency may not be accounted for.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes may not be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Single entry accounting is allowed for small-size enterprises. Accounting in foreign currency is allowed. Accounting for pension plan and leasing is exempted.

(2) Impact differences might have on accounting practice

Under the condition that estimated uncollectable bad debts may not be accounted for, the problem of collectability does not show up and, therefore, there is a concern that it might be too late after the problem becomes bigger in the later date. It results in inaccurate reporting of profit and loss of specific year and the financial status forecast for subsequent years becomes erroneous.

4-3-2-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

It is assumed that, among non-State enterprises, many medium enterprises are joint ventures with foreign capital. Because of the necessity of reporting the accounting to the home country of such foreign capital, the Bulgarian accounting standards are not necessarily followed. From a taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, it is supposed that small enterprises in Bulgaria are managed in the scale of household industry, they may adopt single entry bookkeeping and, therefore, in some cases, it is organized well. However, it is usual that they are not taxed due to very small taxable income.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with

accounting firms, and accounting firms usually give guidance in preparing the accounts based on the Bulgarian accounting standards. They prepare tax returns for such enterprises based on such accounts and, in this respect, there is roles which accounting firms can play. Accounting firms execute auditing of medium-size enterprises (having assets 300 thousand Levs or bigger, or yearly sales 600 Levs or higher, or the number of employees 30 or more).

4-3-2-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Other than tax laws, there are Decrees and Regulations and the enforcement of the system has been improved. Because of the socialist economic system, the organization of taxation offices is not tax-payer-oriented, and there is no concept of careful protection to foster small and medium enterprises, and, therefore, there is no small and medium enterprise specific preferential taxation system. The preferential taxation for foreign capital as industrial policy was abolished in 1998.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. The standard corporate tax rate 27% (20%, if taxable income is below 50 thousand Levs) is applied also to joint ventures with foreign capital. For enterprises which move in the area with high jobless rate (the area where the rate is 1.5 times or over of the nationwide average), 10% of the invested amount is deductible from corporate tax. The same applies to the amount of additional investments.

(3) Actual state of tax examination

Tax examination is carried out by examining documents. Namely, the taxable income is calculated in accordance with the provisions of tax laws, and the tax amount is determined. As audit reports by accounting firms and tax returns are submitted, it is easy to carry out examination.

As persons in charge of tax examination does not have a thorough knowledge of taxation business, great confusion still prevails. For example, Japanese trading firms said that they were at a loss since the procedures for foreign companies to get value-added tax refunded were not clear.

4-3-2-6 The present state of the policy for small and medium enterprises and the points at issue

Bulgaria's policy for small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	National Economic Development Plan 2000-2006	
Small and medium enterprise development plan	National Strategy for Stimulating the Development of Small and Medium Enterprises	
Organization in charge of policy	Agency for Small and Medium Enterprises	
(1) Small and medium enterprise law	Small and Medium Enterprise Act	
(2) Consolidation of management basis		
1) Financial measures		There are financing program and venture capital with the fund of EU PHARE and there are 3 organizations which provide credit protection.
2) Taxation system measures		
3) Organizing measures	Bulgarian Chamber of Commerce and Industry	
4) Fair trade promotion measures	Law for Protection of Consumers and for the Trade Rules	
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices	Public Procurement Act	There is a regulation concerning purchases by the public sector from domestic enterprises
7) Bankruptcy prevention measures		
(3) Supporting structural reforms		
1) Corporate management reform support measures	Management guidance and seminars are given by Bulgarian Chamber of Commerce and Industry	
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor Code 1951 Law for Healthy and Safe Labor Condition Law for the Vocational Education and Training	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO Structural reform fund of the Ministry of Labor Policy and Society
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in Bulgaria

In Bulgaria, GDP was 9,484 million US dollars (1997, World Bank " Report on World Development, " 1998/99) and value-added component ratio was 10% for the agricultural sector, 33% for the industrial sector and 57% for service industries. (ibid) Although there are no clear statistical figures, more than 200 thousand enterprises belong to the small and medium enterprise sector according to the Agency for Small and Medium Enterprises.

There are two sides to Bulgaria's industrial policy: one concerns structural adjustment to shift from a socialist economy to a free market economy, and the other concerns preparations for joining the EU and the development of industries within the frame of the EU after joining. With respect to the former one, the structural adjustment, although the task at present is privatization of State enterprises and the privatization is under progress, it is not easy to solve it as there are problems of disposing nonperforming assets of State enterprises and securing employment of their employees. The government stated that the privatization plan for the industrial sector has been already completed (12/16/99 interview at the Privatization Agency), but, this merely means that things are looking up with respect to the privatization of State enterprises included in the plan and it is the common view of persons concerned in the private sector that there are many State enterprises which are not included in the privatization plan and it will take time until the full-scale structural adjustment of industries is completed. (12/16/99 interview with Japanese enterprises moved in Bulgaria).

Nevertheless, the privatization plan for State enterprises in the industrial sector has been completed and, at least, all State enterprises included in the privatization plan were transformed into joint-stock companies. Therefore, there are three different types of enterprises in the small and medium-size enterprise sector, namely, privatized ex-State enterprises, small and medium enterprises established by private entrepreneurs and small and medium enterprises which are joint ventures with foreign capital. However, in the industrial sector, almost all of them are still ex-State enterprises excluding mom-and-pop business enterprises in auto-repair business etc. Almost all of private enterprises are commerce-related ones and many small stores and eating houses are included. (12/16/99 interview with the Agency for Small and Medium Enterprise)

With respect to the latter one, the task of joining the EU, placing EU membership as its top priority, there is a tendency that the Bulgarian government gives lower priority to other subjects. However, legal regulations have been consolidated in accordance with the EU standards including the Commercial Code which stipulates the field of commercial activities of small and medium enterprises.

The basic idea of the EU regulations is not to separate small and medium enterprises from large enterprises as a general rule, and to let them compete freely without government intervention. Therefore, it is foreseen that undeveloped small and medium enterprises of Bulgaria will receive unfavorable impact from joining the EU. Partly because of this, a policy for small and medium enterprise development is considered within the scope not to violate the EU standards excessively.

(2) Policy for small and medium enterprises

The Bulgaria's policy for small and medium enterprises is by a national strategy (National Strategy for Stimulating the Development of Small and Medium Enterprises), which was originally drawn up with finance crisis two years ago as a start. In this strategy, small and medium enterprise development is deemed important for the structural reform and necessary for strengthening competitiveness. It is also understood that small and medium enterprise development leads to improvement in quality of products and services, promotion of technology transfer and technological reform, securing employment and, as a result, the EU membership.

In this strategy, the following objectives are listed:

Unification of organizations for promotion and regulation of small and medium enterprise development

Improvement in financing service to small and medium enterprises

Strengthening of competitiveness of small and medium enterprises and arranging competitive environment

Transformation to the EU standards and globalization.

The enactment of the Small and Medium Enterprise Act as the Small and Medium Enterprise Basic Law and the establishment of the Agency for Small and Medium Enterprises as an organization in charge of implementation were carried out among tasks of priority for realization of above mentioned objectives. (The Agency for Small and Medium Enterprises was established in the former Ministry of Industry.)

However, the policy for the framework of financing system for small and medium enterprises is not yet fixed and it has not yet been clearly decided how to handle the matter in relation to the EU membership. In this respect, the Small and Medium Enterprise Development Bank was inaugurated in September 1999 with the fund from the Ministry of Finance and tried to lender long-term credits with low interest rate setting about 1 million dollar as the maximum limit. Because of claim from IMF insisting that this system hinders the market economy, however, the Bank was obliged to alter the interest rate to the same level as that of commercial banks. On the other hand, it does not mean that there are no means of financing small and medium enterprises, as there is a financing program with the fund of EU PHARE and venture capital in relation to the European Development Bank and there are three organizations that provide credit protection.

Bulgaria is in relatively favorable position as far as funds for micro-credit to support small enterprises and there are micro-credits from a supporting organization of Germany and the European Development Bank. Furthermore, for the purpose of structural reform, the Ministry of Labor and Social Policy paid thousand German marks to persons retired from State enterprises and there are many cases of establishing enterprises with this fund.

In addition, in order to secure markets for small and medium enterprises, governmental organizations allocate a certain amount from their procurement to small and medium enterprises. With respect to support for education of employees, chambers of commerce carry out working-level education such as short-term courses of bookkeeping.

Mr. Wakiyama, short-term specialist of JICA, provided a technological support to Bulgaria in October 1999 and made 4-item proposal with respect to policy for small and medium enterprises. (According to reference materials provided by the Ministry of Industry)

To strengthen competitiveness of and to activate of Bulgarian enterprises by introducing quality control system. To this end, carry out education campaigns and, if necessary, to establish a fund for promoting approval obtaining to give financial support for such activities.

To draw up a strategy for industrial development. To promote industrialization by establishing financial and economic incentive and appropriate regulations, and carrying out programs based on international cooperation.

To establish an energy-saving center in the Ministry of Industry for fostering energy-saving type industries.

To lender supports to Bulgaria with respect to export insurance, intellectual property right, and transfer of new and high-tech related technology.

(3) Basic law for small and medium enterprise

The Bulgarian Small and Medium Enterprise Act stipulate the definition of small and medium enterprise, the roles of, organization of and authorization for the Agency for Small and Medium Enterprises, the Advisory Committee to the Agency for Small and Medium Enterprises, means to evaluate policies concerning small and medium enterprise development, financial supports, small and medium enterprise development program, relation with privatization of State enterprises, supervising etc.

The definition of small and medium enterprise is stipulated as follows:

Small enterprise: An enterprise having 50 employees or less, and sales amount less than one million BGL or fixed assets not exceeding 0.8 million BGL.

Medium enterprise: An enterprise having 100 employees or less, and sales amount less than three million BGL or fixed assets not exceeding 2.4 million BGL.

(Remark: The Bulgarian currency is fixed to German mark. 1 mark = 1,000 Levs)

4-3-2-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

Bulgaria strongly wish to join the EU as the national policy and is very busily occupied with preparation and arrangement therefor, and other matters cannot be attended. Therefore, at present,

there is not enough room to pay attention to the state of industries and small and medium enterprise development after EU membership is obtained.

As it played a role of high-tech industries while it belonged to former socialist bloc, some say that it is favorable for fostering high-tech industries. However, as small and medium enterprises in the industrial sector have not enough grown up and, especially, supporting industries have not been fostered. There is a tendency that foreign investments flow to Poland etc., and Bulgaria is not in attractive position taking the size of domestic market and conditions for export to Western European markets. Therefore, many difficulties are foreseen with respect to the future direction of small and medium enterprise development, in particular in the industrial sector.

The following 5 points are counted for as problems in carrying out small and medium enterprise development having the EU membership in sight (12/18/99 discussion at the Ministry of Industry) and the support in those areas was requested:

Following the EU standards and the world standards

Strengthening competitiveness

Consolidating infrastructure, improvement in environments

Improvement in quality

Regional development.

In future, although industrial development of Bulgaria in the EU and the plan for small and medium enterprise development which covers the above mentioned subjects would become necessary, no significant difficulties are foreseen since there is a clear basic law for small and medium enterprises and it stipulates the organization in charge of policy for small and medium enterprise development and the structure of financial supports.

However, consolidation of legal regulations and framework for implementing the basic law has not yet completed, consolidation in this area will become necessary. For example, Bulgaria needs urgent supports for the adaptation to the EU standards and it does not seem that Japan can provide much help in this respect. Most prospective areas in which Japan has been and will be able to provide assistance are improvements in productivity and quality.

4-4 ASEAN (Countries shifting to market economy)

4-4-1 Indonesia

4-4-1-1 Already consolidated legal system

The previous Dutch East Indian government adopted the principle of “Concordantie” with respect to the legislation in East India. As a result, laws enacted by the Dutch colonial government follow the Dutch laws in principle. According to Article II, transitional provisions, of the constitution

of Indonesia of 1945, many of laws enacted by the Dutch colonial government still remain effective even today unless new laws are enacted. The above mentioned constitution stipulates as follows: “ All governmental organizations and existing regulations continue to have their effectiveness, provided, however, that it does not apply if a new law is enacted in accordance with this constitution.

The “ legal grades ” of Indonesia are as follows:

- 1) Constitution
- 2) Law/Act
- 3) Government Regulation
- 4) Presidential Decree
- 5) Presidential Instruction
- 6) Ministry Regulation

For example, the Law of the Republic of Indonesia Number 9 of the Year 1995 Concerning Small Business (Act No.9/95) stipulates small enterprises, medium enterprises are stipulated by a Presidential Instruction. Laws and regulations are promulgated with the official gazettes. Presidential Instructions are internal notices to each administrative department and they are not promulgated.

Recently, 6 new laws were enacted. They are the Law Prohibiting Monopolistic Practices and Unfair Trade Competition, the Law on Consumers Protection, the Bankruptcy Law, the Law on the Environment, the Company Law and the Law on Arbitration and Alternative Dispute Settlement.

The enactment of the Law Prohibiting Monopolistic Practices and Unfair Trade Competition and the Bankruptcy Law was conditioned by IMF for the additional financing.

In the recent several years after the Asian financial crisis, the Indonesian economic system is obliged to change and, having this in the background, the “ Seminar on Economic Laws and Institutions: Indonesia and Japan ” was held under the joint auspices of the Ministry of International Trade and Industry of Japan, JETRO, the Institute of Developing Economies of Japan, the Ministry of Industry and Trade (MOIT) of Indonesia and the Faculty of Law, University of Indonesia (FHUI).

In this seminar, reports on competition laws, consumer protection laws, bankruptcy laws, arbitration laws, company laws, environmental laws etc. of both countries were presented.

(1) Company law

In Indonesia, the provisions concerning company (only 21 articles) of the 1848 Commercial Code, which were transferred under the Dutch control, continued to exist until the new Company Law was enacted in 1995. Under the old law, as it was enacted in the middle of the 19th Century, the establishment of companies were based on charter (discretionary permission) and the system was structurally characterized by the fact that a company did not have a board of directors and a board of “kommissaris,” instead of a board of directors, has the power to dismiss directors and to decide on important matters. The name “kommissaris” has its origin in auditors under the Dutch Commercial Code and, in reality, it had the stronger power than that of auditors.

The new Company Law was enacted in March 1995 and enforced in March 1996. It stipulates the establishment of companies, organizational form, the general meeting of shareholders, auditing of books and liquidation.

With this new Law, modernization was aimed for, for example, the establishment of companies are based on provisions of laws. However, even under this new Law, the basic structure such as a board of “kommissaris” remains unchanged and, therefore, it seems that the main purpose of establishing the new Law was a part of the policy for activating the security market rather than the reform of managerial structure of companies.

On the other hand, adoption of shareholder lawsuit system, intensifying of responsibilities of directors, establishment of provisions concerning buyout and merger etc. were realized.

As types of companies, there is a finance-related company other than local PT companies, PMDN companies and foreign capital companies (PMA companies).

The organizations of company consist of the general meeting of shareholders, the board of directors and the board of kommissaris.

1) General meeting of shareholders

An ordinary general meeting of shareholders is held within 6 months after the end of each financial year and approval of the yearly business report is resolved. The board of directors has a right to call the general assembly of shareholders other than the ordinary meeting and minority shareholders (owning more than 10% of issued shares) may request the board of directors or the board of kommissaris to hold a general meeting of shareholders.

2) Board of directors

Directors are appointed and dismissed by the general meeting of shareholders and the term of office is fixed and may be reappointed. Unless otherwise stipulated by the articles of incorporation, each director has a right to represent the company and execute the management of the company.

3) Board of kommissaris

This board supervises managerial judgments of the board of directors and gives advices to the board of directors.

(2) Labor law

Although the new labor law, which was enacted in October 1997, was originally planned to be enforced from October 1998, because of abrupt change in political and social situations (collapse of Suharto regime in May 1998), the enforcement is still factually suspended. Therefore, the former 5 labor-related laws still apply at present. They are the “ Law concerning Nationwide Application of 1948 Labor Law (1951), ” “ 1954 Law concerning Labor Contract, ” “ 1958 Law for Employment of Foreigner, ” “ 1963 Law for Avoiding Strike and Lockout ” and the “ Law concerning Basic Matters Related to Workers (1969). ”

It is said that the reason for suspension of enforcement of the new labor law of 1997 was the fact that the new law was the compilation of banchasira labor relations which was the basis of labor policy of Suharto regime. Under the Suharto regime, any labor union which was not approved by the government were not allowed to act as a labor union with the reason that it was contrary to banchasira labor relations. There were international criticisms on this as it deprived the freedom of assembly and association. It is also said that the suspension of enforcement of the new labor law aimed for appealing establishment of democracy to the international society by allowing free establishment and activity of labor unions. In June 1998, the ILO Treaty No. 87 concerning the freedom of association and the right to organization was ratified.

(3) Bankruptcy law

The new Bankruptcy Law was adopted on April 22, 1998 and enforced 120 days later in August 1998. It aims quick and practical settlement of disputes between a creditor and a debtor. It is an amendment of the 1905 Bankruptcy Law based on the agreement with IMF. Main points of amendment are as follows:

- 1) Detailed provisions for suspension of discharge of the obligation with the maximum period of grace of 270 days were established aiming to promote composition.
- 2) Jurisdiction of bankruptcy cases was given to newly established bankruptcy courts and the dual trial system was adopted for bankruptcy cases with the Supreme Court as the appellate court.
- 3) The time limit for each procedure was described aiming at quicker bankruptcy proceedings.
- 4) Applicant of bankruptcy proceeding is limited to the Central Bank as bank and the Agency for Supervision of Security Market as security company, but, on the other hand, prosecutors can be applicants for bankruptcy proceeding for the purpose of public interest.
- 5) Bankruptcy proceedings by reorganization by restricting security right such as corporate reorganization are not provided for.

At present, a corporate reorganization law is under the process of drafting.

(4) Antimonopoly law

The Law Prohibiting Monopolistic Practices and Unfair Trade Competition was promulgated on March 5, 1999, and it will be enacted one year later, namely, on March 5, 2000. This enactment was carried out through amendment by the government to the draft drawn up as a draft for legislation by Parliament member as a compromise therebetween. As a German legal specialist cooperated in the process of drawing up the draft for legislation by Parliament member, the law is of German type. In 1993, USAID of the United States suggested a draft as cooperation, but it was not adopted. The reasons were given as follows:

- 1) As capabilities of courts are low in Indonesia, antimonopoly laws under which courts play a major role do not fit.
- 2) The system like US one, in which antimonopoly laws have small number of articles as statutory law and plural number of governmental bodies, the Ministry of Justice and the Federal Commission, have jurisdiction, does not fit.
- 3) In Indonesia where many manufacturers are of foreign enterprises, the system like US one, in which manufacturers are allowed to have broad right to refuse to have business relationship with dealers, does not fit.

It is planned to establish the Business Competition Supervisory Committee (KPPU) as an agency to implement antimonopoly laws. This Committee will be an independent agency that will not be influenced by the government or others and responsible to the president (Article 30 of the Law). Entrepreneurs engaging in small enterprises and cooperative society's activities exclusive for its members are included in the exclusions of this Law.

In Article 50 of the Law, exclusions are listed, in addition to

- b. Contracts related to intellectual property rights such as license, patent, trade brand, copyright, industrial product design, integrated electronic series, and trade secrets, and contracts related to franchise, including
- h. Entrepreneurs categorized engaging in small scale business.
- i. Cooperative business activities serving specifically only its members.

In addition, the Law on Consumers Protection was promulgated on April 20, 1999.

(5) Intellectual property law

In the field of intellectual property law, the Patent Right Law, the Trademark Law and the

Copyright Laws were already consolidated and bills for an industrial design law, a trade secret law, a semiconductor law were submitted to the Parliament in December 1999 and they are under deliberation. Three new bills under deliberation were drawn up by the task force consisting of the Ministry of Industry and Trade and domestic legal specialists without having assistance from specific foreign country.

In the Industrial Design Law, there are no provisions for substantive examination and the law is based on European system. As there is no system for substantive examination, it can be said that it was wisely chosen. As 97% of patent applications are from abroad and they do not need substantive examination in Indonesia. Therefore, capability of patent examination is not known.

4-4-1-2 Problems arising in enforcing legislation

IMF required enactment of a bankruptcy law and an antimonopoly law as conditions for providing credit and it has been guiding so that insolvency and fair trade practices are handled in a way close to international standards. Looking into the state of implementation of the amended Bankruptcy Law in Indonesia, however, it is said that the local government and the Parliament have been trying to maintain management rights of local financial combines by just carrying out enactment but create systems which do not function properly telling that they do not conform to the reality.

In Indonesia, the commercial courts and the Supreme Court, which became in charge of unified examination of bankruptcy cases, refuse to accept bankruptcy applications by creditors. It is pointed out that the courts are avoiding political responsibilities by making use of ambiguousness of provisions of the Bankruptcy Law.

With respect to the antimonopoly law also, partly because of the fact that the law was enacted in the form of the legislation by the Parliament member, the government circles still show certain resistance and it is pointed out that real intention of the drafter, " although local large enterprises cannot come into existence if antimonopoly law exists, we were obliged to enact it since IMF conditioned it for giving credit, " is seen everywhere.

(Problematic points of the recent amendment of the Law is pointed out also in " Legislation of the antimonopoly law in Indonesia " 1999 by Mr. Koji Suzuki, " International Commercial Judicial Affairs, " Vol.27, No.4, " Will the amended Indonesian antimonopoly law be utilized? " 1999 by Mr. Koji Suzuki, " International Commercial Judicial Affairs, " Vol.27, No.1, and " The future of the 1997 labor law of Indonesia " 1999 by Mr. Koji Suzuki, " International Commercial Judicial Affairs, " Vol.27, No.3.)

[Reference]

[Association of Southeast Asian Nations (ASEAN)]

ASEAN is an organization for regional cooperation aiming for interchanging in the filed of economic society, culture etc. and was established on August 8, 1967. Thailand, Malaysia,

Singapore, Indonesia and Philippines participated in its establishment. Brunei joined in January 1984, and Vietnam in July 1995, and Myanmar and Laos in July 1997. Further, on April 30, 1999, Cambodia, of which participation had been postponed, was approved to join.

In ASEAN, discussions are carried out in the ordinary meeting of the Ministers of Foreign Affairs once every year as the center through meetings of the cabinet members in charge of economy, summit meetings etc. and decisions are made with the rule of unanimous consent. Furthermore, the expanded ASEAN meetings of heads and the Ministers of Foreign Affairs (ASEAN/PMC) are held ordinarily with heads and the Ministers of Foreign Affairs of the United States, Japan, China etc.

[Asia-Pacific Economic Cooperation (APEC)]

A meeting for cooperation to which 18 countries and areas such as Japan, the United States, Canada, Australia, New Zealand, ASEAN countries, Republic of Korea, Taiwan, Hong Kong participate. The 1st meeting of cabinet members was held in November 1989 in Canberra based on the proposal by the Prime Minister Hawke. Thereafter, the 2nd meeting (1990) was held in Singapore, the 3rd (1991) in Seoul, the 4th (1992) in Bangkok, the 5th (1993) in Seattle, the 6th (1994) in Bogor, and the 7th (1995) in Osaka. In the 3rd meeting of cabinet members in 1991, Malaysia came up with the idea of the East Asia Economic Caucus (EAEC), which has the nature of a trade bloc. In the 8th meeting in Manila in 1996, the concrete plan for the liberalization of trade and market, which was agreed in the 6th meeting in Jakarta, was presented. In the meeting in Vancouver in 1997, it was decided that Russia, Peru and Vietnam would join from the Kuala Lumpur meeting in 1998. In 1999, the meeting was held in Auckland and the declaration of heads which mentions reinforcement of functions of financial market was announced.

4-4-1-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Indonesian accounting standards

Although Indonesia has started to introduce the international accounting standards, there still remain many differences. Differences relating to small and medium enterprises are compared in the table below. All enterprises including large enterprises follow the Indonesian accounting standards in their accounting practice. (There are two security markets and the standards for listing in the security markets exist. Therefore, cash flow statements, consolidated accounting, pension accounting and leasing accounting which appears applicable to large enterprises, would not be taken into consideration this time.)

	International Accounting Standards	Indonesian Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Same as the International Accounting Standards No provisions
Account receivable	Estimated uncollectable bad debts are accounted for.	Estimated uncollectable bad debts may be accounted for.
Tangible fixed asset	Cost or revaluated value Depreciation with estimated service life	Cost or price of investment in kind by foreign capital Depreciation
Intangible fixed asset	Experimental and research expenses shall be accounted for on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on number of years of effectiveness. Depreciation
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	Same as the International Accounting Standards
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency may be accounted for.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes may be accounted for.

(2) Impact differences might have on accounting practice

Reportedly, many medium enterprises in Indonesia are with overseas Chinese capital. If businesses are operated in a way to establish one enterprise for each individual business, since the liability of companies are limited, negative impact of financial burden due to collective responsibility is not given to other companies even if business of one company failed. However, as consolidated accounting is required in Indonesia as a general rule, owners of 50% or more of share capital need to prepare consolidated financial statements including daughter companies and affiliated companies. Under the present system in which consolidated taxation system has not yet been introduced, there is no problem in practice even if consolidated financial statements are not prepared by negligence since there are no provisions of penalty. However, it is undesirable from information disclosure of enterprise point of view.

4-4-1-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital and enterprises with overseas Chinese capital. Because of necessity of reporting the accounting to the

home country of such foreign capital, the Indonesian accounting standards are not necessarily followed. With relation to taxation, joint ventures with foreign capital make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, it is said that enterprises with overseas Chinese capital prepare two to three accounting books, books for excessive tax saving and books for obtaining credits from banks.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms. Accounting firms usually give guidance in preparing the accounts based on the Indonesian accounting standards. They prepare tax returns for such enterprises based on such accounts and, in this respect, play a certain role. However, as small enterprises do not utilize the services of accounting firms, accounting firms have hardly any role in this area. (Only large enterprises, which are listed in the security markets, get their accounts audited. In addition to Jakarta markets, there is a security market in Surabaya to which about 200 companies are listed and, as the standards for listing is moderate, listing of medium enterprises, corporate bonds and government bonds are accepted.)

4-4-1-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Other than tax laws, there is a handbook (English) and the enforcement of the system has been improved. However, as there are many special actions with the presidential decrees, actual treatments are complicated, unfair and ambiguous. Although the organization of taxation offices is big, it is not taxpayer-oriented and there is no concept of careful protection to foster small and medium enterprises. Therefore, there is no small and medium enterprise specific preferential taxation system. There is hardly any taxation system for industrial policy other than preferential treatment for foreign capital. Although the total population of Indonesia exceeds 2 hundred million, the number of individual taxpayers is only 1.26 million. On the other hand, fixed asset tax for land and buildings are paid for 75 million cases.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, in the case of new investing enterprises, the corporate tax with the standard progressive rates 10%, 15% and 30% is exempted for five years for enterprises, which move in areas other than Java and Bali, and for three years with relation to Java and Bali. Furthermore, in the case where (1) such enterprise has 2,000 or more employees, (2) 20% or more of its share capital is owned by cooperatives or (3) the amount of investment is 200 million dollars or more, the period of tax exemption is extended for another year. In the case where construction period for the investment does not exceed 5 years, the period of tax exemption is extended for the saved period of time. Further, those enterprises, which moved in the area for integrated economic development, can enjoy various exemptions of customs duty and value-added taxes in addition to above mentioned tax exemptions.

(3) Actual state of tax examination

Tax examinations are carried out in a way to determine by negotiation. Namely, taxable income is not calculated in accordance with the provisions of taxation laws and, in many cases, the tax amount is determined with assumption based the business scale. As persons in charge of tax examination do not have a thorough knowledge of taxation business, there are many criticisms to willful taxation or misconducts in occasions of contract with taxpayers.

The tax revenues from corporate tax, individual income tax (45 trillion rupiah) and value-added tax (35 trillion rupiah) became higher than customs duty (6 trillion rupiah) and, therefore, understanding of tax payers became important together with education of taxation officers.

As the reserve for bad debts is not allowed for taxation purpose, profit on financial accounts and income for taxation purpose differs to that extent. Wages in kind are not deductibles for corporate tax, but are not included in taxable income for individual income tax.

4-4-1-6 The present state of the policy for small and medium enterprises and the points at issue Indonesia's policy for small and medium enterprises

Indonesia's policy for small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	None	There is the Guideline of the State Policy Looking to the Future of the Indonesian Economy.
Small and medium enterprise development plan	None	There is the Industrialization Plan 2000.
Organization in charge of policy	Ministry of Industry and Trade Ministry of Cooperatives, Small and Medium Enterprises	MOIT is in charge of development of manufacturing industries and MCSME is in charge of small-scale enterprise development. At present, however, it is fluid.
(1) Small and medium enterprise law	The Law of the Republic of Indonesia Number 9 of the Year 1995 Concerning Small Business Republic of Indonesia President Instruction Number 10, the Year 1999	#9, 1995 stipulates definition and development of small enterprises. Medium enterprises are stipulated by the presidential decree #10, 1999.
(2) Consolidation of management basis		
1) Financial measures		Although there was a policy credit body, it is under reconsideration at present.
2) Taxation system measures		
3) Organizing measures	Law of the Republic of Indonesia Number 25 of the year 1992 concerning Cooperative The President of the Republic of Indonesia Decree Number 99 of 1998 on Fields/sorts of Businesses Reserved for Small Enterprises and Fields/sorts of Businesses Open to Medium or Large Enterprises on the Basis of Partnership	Not only chambers of commerce but also the Ministry of Cooperatives have promoted organization of cooperatives. Further, the Ministry has promoted partnerships with small and medium or large enterprises.
4) Fair trade promotion measurers		The antimonoopoly law was promulgated on March 5, 1999.
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		

7) Bankruptcy prevention measures		The Bankruptcy Law was promulgated on April 22, 1998.
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		The Ministry of Cooperation has been carrying out regional small and medium enterprise development utilizing cooperative system and business centers.
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures		The labor laws exist separated into several laws such as the Act No.1/1951.
11) Energy and environment measures		
12) Internationalization measures		Expositions are held at the chambers of commerce. Activities to invite foreign capitals are actively carried out with cooperation by JETRO etc.
(4) Small-scale business measures		The Ministry of Cooperatives has been carrying out regional small and medium enterprise development centered on handicrafts utilizing cooperative system and business centers.
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in Indonesia

In Indonesia, GDP was 214,593 million US dollars (1997, World Bank " Report on World Development, " 1998/99) and the value-added component ratio was 16% for the agricultural sector, 42% for the manufacturing industry sector (25% of which is for manufacturing industries) and 41% for service industries. (ibid)

Although statistical data could not be obtained during survey, according to BAPPENAS that we visited, there are about one million small-scale enterprises in Indonesia and those small-scale enterprises probably occupy 60% or more of the total number of enterprises in Indonesia.

Although Indonesia was influenced most severely by Asian crisis and got into chaotic situations, the National Policy Guideline 1999 was issued urgently due to necessity to show the direction for the Nation and, at present, this stipulates national plans and decides the direction of the Nation.

The contents of this Guideline consists of two parts, and it sets out to urgently bring up industries

to the level of that before the crisis as short term strategy for the time period from 1999 to 2003, and to develop strong Indonesian industries with international competitiveness which needs not rely on imports as long term strategy for the time period from 2004 - 2020.

The Indonesian Ministry of Industry and Trade announced the Industrialization Plan 2000 (Program Pengembangan Ukm-Indag Tahug 2000) in February 2000 as the policy for industrial development.

Among Indonesian small and medium enterprises, industrial sub-sectors such as foodstuff processing, fiber, sewing, paper products, automobile parts, electric appliances, electronic parts occupy the major part. High growth rate similar to that before the crisis has been maintained with respect to production of capital goods and intermediate goods centering on foreign capital enterprises. Partly because of this fact, Indonesian government tries to put effort on invitation to foreign capitals based of the understanding that the invitation of foreign capitals is the key factor for economic recovery.

(2) Policy for small and medium enterprises

With respect to policies for small and medium enterprises of Indonesia, big policies have been promoted by BAPPENAS and implementation thereof has been carried out by two governmental agencies, the Ministry of Industry and Trade and the Ministry of Cooperatives, Small and Medium Enterprises. However, this structure is going to be changed drastically. Therefore, at present, it is not foreseeable by what kind of systems policies for small and medium enterprises will be carried out.

In the past, BAPPENAS drew up national plans at first and, then, the Ministry of Industry and Trade implemented industrial policies. The policy of the Ministry of Industry and Trade is to draw up the industrial policy separately for each industrial sub-sector and to implement it, and not so much attentions were paid to policies for the promotion of small and medium enterprises. Further, with respect to the promotion of small and medium enterprises, as the policy-making power was taken by the Ministry of Cooperatives and policy credit institutions and State enterprises (manufacturing industry), which can be utilized as policy tools, are not under its control, the Ministry of Industry and Trade could not carry out much having no measures to implement policies. (State enterprises are controlled by the Ministry of State Enterprises.)

Small enterprises, including small-scale enterprises, development was the territory for the Ministry of Cooperatives. The Ministry of Cooperatives organized trade associations and regional industrial associations for handcrafts, agriculture, manufacturing industries and, in addition, have implemented the policy to organize relationship with large-scale enterprises (subcontracting relationship) called partnership. At the same time, however, this organizational structure was built into the political regime and played a role to poll collecting organization for the Gorukaru Party. This political mechanism was denied as a result of the Asian crisis and political chaos and the budget and the power of the Ministry of Cooperatives were cut down drastically, thereby transferring the implementing power of this Ministry for small and medium enterprise development, including

fostering and protection of small-scale enterprises, to regional municipal bodies and only leaving the function of drawing up policy to this Ministry.

The partnership policy carried out by the Ministry of Cooperatives made success partly in certain area as seen in the automobile industry (Astra etc.) where supporting industry has been fostered. However, such result was lost because of the Asian crisis as automobile assembly manufacturers, which were existing at the top of supporting industries, themselves became nonperforming assets and, accordingly, the partnership carried out by the Ministry is receiving strict criticism.

1) Financing for small and medium enterprises

Although there were several state-owned banks, such as Bank Indonesia, which played a role of financial institution for small and medium enterprises, the financial reform is at present under progress to cope with the Asian crisis. However, financing for small and medium enterprises is given importance and, under the initiative by IMF, the following measures to consolidate financial institutions for small and medium enterprises are considered:

BRI, PT Madani and BTN provide credit guarantee,

Mandiri Bank will become a financial institution for small and medium enterprises, and

BRI will become a commercial bank and will be specialized in micro-finance.

The Surabaya security exchange is now under consideration for small and medium enterprise specific security market.

2) Technological support, training

The operating power to business centers, which were established with the initiative of the Ministry of Cooperatives, was transferred to regional municipal bodies and technological transfer and trainings specifically for small-scale enterprises are being carried out having village base training centers as the business center.

(3) Basic law for small and medium enterprise

There are the Law of the Republic of Indonesia Number 9 of the Year 1995 Concerning Small business, which stipulates the framework of policy of Indonesia for small and medium enterprises. The objects of this Law are limited to only small-scale enterprises. In this Law, it is stipulated as “enterprises with assets of below 200 million rupiah excluding land and buildings.” This basic law for small and medium enterprises was enacted based on the Industrial Law, Law #5 1984 (Law for Industrial Development) and it was stipulated in 1979 that MOIT is one of governmental agencies responsible for small and medium enterprise development.

On the other hand, the Law of The Republic of Indonesia Number 9 of The Year 1995 Concerning Small Business is the basis for the policy of the Ministry of Cooperatives and the basis of

administration by this Ministry. Furthermore, the basis for cooperation policy (Partnership) carried out by this Ministry is the President of the Republic of Indonesia Decree Number 99 of 1998 on Fields/Sorts of Business Reserved for Small Enterprises and Field/Sorts of Businesses Open to Medium or Large Enterprises on the Basis of Partnership and, for organizing of cooperatives, the Law of the Republic of Indonesia Number 25 of the year 1992 concerning Cooperatives.

The Law of The Republic of Indonesia Number 9 of The Year 1995 Concerning Small Business stipulates about small enterprises and medium enterprises are not stipulated; provisions for medium enterprises are made clear as provisions for implementation in Instruksi Presiden Republik Indonesia Nomor 10 Tahun 1999 Tentang Pemberdayaan Usaha Menengah (The presidential decree #10: Republic of Indonesia President Instruction Number 10, the Year 1999).

According to the Ministry of Justice, above-mentioned laws are effective unless new laws or amendments to those laws are enacted, and, therefore, small and medium enterprise development is carried out within the framework of those laws even if the power of the Ministry of Cooperatives to implement small and medium enterprise development is transferred to regional municipal bodies. Accordingly, it is considered that the Law of Republic of Indonesia Number 9 of the Year 1995 Concerning Small Business, among others, is valid as the basic law for small and medium enterprises. It means that regional municipal bodies are obliged to carry out small and medium enterprise development within the framework of this Law.

4-4-1-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

Although Indonesia has been recovering from confusions, figures, which evidently indicate economic recovery, are not yet seen. However, it was quite impressive that all interviewees similarly stated that they were feeling bright indication for the future.

As cooperation from Japan, while cooperation for drawing up a master plan for small and medium enterprise development was given to Thailand under the initiative of a specialist, Mr. Mizutani, a mission having professor Urata as the leader will visit Indonesia and start full-scale survey and supports. Therefore, as the direction and objectives of consolidation shall be determined by the mission, only several points which we found this time are give below.

Not all of policies for fostering domestic enterprises, including partnership and cooperative system which the Ministry of Cooperatives implemented, were wrong. Some of them were correct and some actually brought results. There is a problem that the partnership was pushed ahead without paying due attention to inter-industry relations and a failure of creating corrupt connection by promoting cooperative system too quickly. It is important to correct failures or weak points, at the same time, giving proper appraisal to points which deserves high note and make most of experiences for comprehensive policy for small and medium enterprise development in the next stage.

It seems that fostering supporting industries centering on foreign investment, rather than small and medium enterprise development putting stress on handcraft such as batik, is of greater

importance. Although the Indonesian government has tried to foster supporting industries with the partnership etc., it is suspended because of criticism in the Asian crisis. However, importance of fostering supporting industries did not change. The point is how to foster which industries. In order to let Indonesian economy revive and let it develop further, it is urgently needed to draw up a firm master plan for industrial development and strategy for enterprise development.

4-4-2 Malaysia

4-4-2-1 Already consolidated legal system

Among Asian countries we visited this time, Malaysia has the highest GDP per capita and the basic legal system that is necessary for activities of enterprises are almost consolidated.

With respect to the legal system, the influences of traditional English laws still strongly remain at least in appearance. For example, many persons of the legal profession studied in the United Kingdom or Australia, they wear gowns in superior courts same as in the United Kingdom, and English is used for legal terms.

(1) Company law

In Malaysia, while MITI (Ministry of International Trade and Industry) has jurisdiction over administration of industry and international trade, MDTCA (Ministry of Domestic Trade and Consumer Affairs) has jurisdiction over administration of domestic trade. ROC (Office of the Register of Companies), which belongs to MDTCA, has jurisdiction over matters related to registration of companies and implementation of company law. The Companies Act 1965 stipulates about companies.

There are three types of companies that can be established under the Companies Act 1965 as follows:

1) Company Limited by Shares

2) Company Limited by Guarantee

3) Unlimited Company.

In the case of 1) Company Limited by Shares, personal responsibility of equity participant is limited to the par value of its shares and, in the case of 2) Company Limited by Guarantee, responsibility of equity participant at the time of liquidation of the company is limited to the nominated amount. In the case of 3) Unlimited Company, however, equity participant bears unlimited responsibility.

Company limited by shares is the most common form of company, and it takes either one of two forms, private company or public company.

Any company limited by shares can be established as a private company if the following requirements are satisfied with the articles of incorporation:

- (a) Rights to transfer of shares are restricted.
- (b) The number of shareholders is limited to not exceeding 50, excluding employees and ex-employees.
- (c) Public offering of shares and debentures is prohibited.
- (d) Public offering of deposit money with the company is prohibited.

Although it is possible to establish a company limited by shares as a public company, it is also possible to transform a private company into a public company in accordance with the provisions of Article 26 of the Companies Act 1965. Further, it is also possible to transform a public company into a private company in accordance with the provisions of above-mentioned Article.

There is no organization like fair trade commission and no antimonopoly law is enacted. At present, enactment is under study.

(2) Securities commission act

Main governmental organizations that are in charge of security administration in Malaysia are the Ministry of Finance and the Securities Commission (SC). The Securities Commission (SC) was established on August 1, 1993, based on the Securities Commission Act 1993 and carries out selection and control of standards for listing of enterprises to the stock exchange, examination of merger and acquisition of enterprises. Other than those, the Foreign Investment Committee (FIC) plays a role of supervising the state of share holding by foreign investors as an executing body of the New Development Policy (NDP).

In Malaysia, there are two security exchanges, Kuala Lumpur Security Exchange (KLSE) and Bumiputra Security Exchange (BSE). KLSE consists of two boards, the Main Board and the Second Board, and, in the Main Board, stocks, corporate bonds, real estate in trust and TSR (Transferable Futures Exchange), for which listing is allowed since 1989, are traded. The Second Board was opened in November 1988 with the aim to provide the field of raising funds for developing Small and Medium Enterprises. As participants of the Bumiputra Security Exchange (BSE) are limited to Bumiputra (Malayan), only five companies are listed and dealing is dull.

Public companies may not execute public offering of shares without registration by submitting Prospectus to ROC in accordance with provisions of the Companies Act 1965. It is required to submit an application to and get approval from the Securities Commission (SC) for public offering of shares before Prospectus is accepted and registered by ROC.

In October 1997, the plan for establishment of the Malaysia Exchange of Securities Dealing and Automated Quotation (MESDAQ) for emerging high-tech related enterprises was announced and dealing was started on April 30, 1999.

(3) Recent movement for amendment of company law etc.

Amendments of the Companies Act 1995, the Securities Commission Act 1993 and the Bank and Financial Institution Act 1989 are under study with the aim to activate the market for corporate bonds. If amendments will be effected, the functions of giving approval for issuance of corporate bonds will be centralized to the Securities Commission (SE) and its procedures will be simplified. Measures to promote the lowering of acceptance commissions are also under study now.

Means for raising funds for Malaysian enterprises have been mainly bank loans and issuance of shares and it was pointed out that financial status of enterprises was degraded by movements of financial institutions for collecting loans secured by shares at the time of currency crisis. Therefore, the government intends to proceed with fostering of the corporate bond market from the risk diversification point of view.

(4) Technology transfer

All projects of manufacturing industries which obtained license for manufacturing based on the Industrial Coordination Act 1975 are required to obtain written consent from MITI in advance when they conclude technology transfer agreement with foreign partners. This system is to prevent that the Malaysian parties are forced to accept unfair and unreasonable restrictions or unfavorable conditions by contract or that national interest is violated by agreements and, in the case where payment of compensation exists, to ensure that the compensation is balanced with the level of transferred technology.

Applicable laws and regulations for the technology transfer agreement between an enterprise owned by Malaysian national or a joint venture with Malaysia and a foreign enterprise is Malaysian law. Arbitration of dispute is carried out in Malaysia and the applicable law shall be either the Arbitration Act 1952, as amended in 1972, of Malaysia or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), and it shall be settled at the Regional Center for Arbitration of the Asian-African Legal Consultative Committee (AALCC) in Kuala Lumpur.

(5) Intellectual property law

Protection of patent rights is carried out based on the Patents Act 1983 and the Patents Regulations 1986. Patentees have right to utilize patented invention, to assign or transfer the patent right and conclude license agreement.

Protection of trademark rights is carried out based on the Trade Marks Act 1976 and the Trade Marks Regulations 1997.

Protection of copyrights is carried out based on the Copyright Act 1987. Works as the object of copyright cover computer software.

With respect to industrial design, the Designs Act 1996 was enacted in 1996.

4-4-2-2 Problems arising in enforcing legislation

It is said that problems in the Malaysian company law exist not in the law itself but in the system for implementation. The point is that the system for supervising management is too powerful. In particular, it is pointed out that the power of Registrar for requiring information, inspection and investigation is too strong. Furthermore, it is pointed out that the system is applied especially strictly to foreign enterprises including Japanese enterprises and enterprises which do not belong to influential overseas Chinese groups. Including those points, many of the points at issue in Malaysian legal system can be said to be attributable to the Bumiputra policy.

In the “ Chapter 3: Rectification of poverty, social reorganization and distribution of income ” of the 7th Development Plan of Malaysia (1996-2000), 1) rectification of poverty, 2) Bumiputra industrial society, 3) ownership and governance of enterprises and 4) distribution of income are listed as the objectives of the plan and the target to try to raise the company capital owned by Bumiputra capital at least to 30% not only in “ 2) Bumiputra industrial society ” but also in “ 3) ownership and governance of enterprises. ”

The compatibility between such Bumiputra policy and the “ Rule of Law, ” which is the basic rule of Anglo-American laws, will remain to exist as the point at issue. (The “ Law ” in the “ Rule of Law ” has the nuance of natural law rather than statutory law.)

4-4-2-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Malaysian accounting standards

Although Malaysia has introduced the international accounting standards, it also established its own accounting standards. There are still several differences, and the differences relating to Small and Medium Enterprises are compared in the table below. Accounting practice in all enterprises in Malaysia including large enterprises is carried out based on both the international accounting standards and the Malaysian accounting standards. (There is security markets and there also exist the standards for listing to the security markets. Therefore, cash flow statement, consolidated accounting, pension accounting and leasing accounting, which are supposed to be applied to large enterprises, are also taken into consideration.)

	International Accounting Standards	Malaysian Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Lower-of-cost-or-market method To be based on the International Accounting Standards
Account receivable	Estimated uncollectable bad debts may be accounted for.	To be based on the International Accounting Standards
Tangible fixed asset	Cost or revaluated value Depreciation with estimated service life	To be based on the International Accounting Standards To be based on the International Accounting Standards
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on number of years of effectiveness Only purchased goodwill shall be reckoned up and depreciated.
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	To be based on consolidated accounting
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	To be based on the International Accounting Standards
Allowance	Contingent charge and loss shall be accounted for.	To be based on the International Accounting Standards
Provision for taxes payable	Deferred taxes shall be accounted for.	To be based on the International Accounting Standards
Profit and loss calculation	All incomes and expenses shall be accounted for.	To be based on the International Accounting Standards

(2) Impact differences might have on accounting practice in small and medium enterprises

The difference is that experimental and research expenses shall not be accounted for on accrual basis but shall be depreciated based on number of years of effectiveness. However, it seems that this will not create big problem for small and medium enterprises and that, as the expenses can be deferred to subsequent years, it will not create problems with respect to taxation.

4-4-2-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Many medium-size enterprises are joint ventures with foreign capital and enterprises owned by overseas Chinese groups and, because of the necessity of reporting the accounting to the home countries of the foreign capitals, it is supposed that the accounting is based on the international

accounting standards. From taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. In practice, it is required to attach audited statement of accounts. On the other hand, Malaysian small enterprises are supposed to be managed with the scale of household industry. It is usual that accounting record is not well prepared and that, as taxable income is small, they are taxed based on rough estimate by tax examination.

(2) Role of accounting firms

Many medium-size enterprises, which are joint ventures with foreign capital, have relations with accounting firms, and accounting firms usually give guidance in preparing the accounts based on the Malaysian accounting standards. They prepare tax returns for such enterprises based on such accounts and, in this respect, play a certain role. On the other hand, as small enterprises do not utilize accounting firms, there is little role to be played by accounting firms in this area. Overseas Chinese enterprises, however, utilized accounting firms and credit service of banks for reasons of transferring money to the Southeastern Asia.

4-4-2-5 The present state of the taxation system and the points at issue

(1) Tax collection system

There is a tax law and the implementation of the system has been improved. Because of the socialist economic system, the organization of taxation offices is not taxpayer-oriented, and there is no concept of careful protection to foster small and medium enterprises, and, therefore, there is no small and medium enterprise specific preferential taxation system. As seen from existence of wealth tax, there is hardly any taxation system based on industrial policy other than preferential treatment for foreign capital.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

There is no small and medium enterprise specific preferential taxation system. Instead, the standard corporate tax rate 28% is reduced to 25% for joint ventures with foreign capital. As a preferential treatment for investment, tax is exempted for five years after establishment as pioneer status. On the other hand, if an enterprise chooses the Investment Tax Allowance, increased depreciation of fixed assets may be carried forward without time limit until the enterprise makes a profit. If any additional investment is made in the course of operation, 60% of the amount of such reinvestment may be deducted from the income as increased depreciation.

(3) Actual state of tax examination

Tax examinations are carried forward in the way to determine by negotiation. Namely, taxable income is not calculated in accordance with the provisions of taxation laws and, in many cases, the tax amount is determined with assumption based on the business scale. As persons in charge of tax examination did not have a thorough knowledge of taxation business, there were great confusions with relation to the turnover tax (5%, 10%, and 15%) and service tax (5%). Revenues from indirect taxes (46% of the total tax revenues) are more important than the tax revenues from corporate tax and personal income tax.

4-4-2-6 The present state of the policy for small and medium enterprises and the points at issue

Malaysia's policy for small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	Seventh Malaysia Plan 1996-2000	There is a draft for the 8th National Plan
Small and medium enterprises development plan	Second Industrial Master Plan 1996-2005	Small and medium enterprises development is studied as a part of industrial development in the Second Industrial Master Plan 1996-2005.
Organization in charge of policy	Ministry of International Trade and Industry SMIDEC: Small and Medium Industries Development Corporation Ministry of Entrepreneur Development	SMIDEC is in charge of small and medium enterprises development and the Ministry of Entrepreneur Development is in charge of small-scale enterprises development.
(1) Small and medium enterprise law	None	The basic standpoint is that the development of small and medium enterprises is possible by combining various policy tools. In fact, there exist full set of policy tools for the promotion of small and medium enterprises.
(2) Consolidation of management basis		
1) Financial measures	ITAF of SMIDEC CGCMB: Credit Guarantee Corporation Malaysia Berhad	ITAF of SMIDEC provides direct financing and CGCMB is a public corporation that provides credit guarantee.
2) Taxation system measures		There are many taxation-related tools that can be utilized as measures for small and medium enterprise promotion such as ITA: Investment Tax Allowance, RA: Reinvestment Allowance, IAA: Incentives for Industrial Adjustment, and Incentives for High Technology Industries.
3) Organizing measures	Malaysian Chamber of Commerce Malaysian Industrial Federation	In schemes, such as ILP of the Ministry of International Trade and Industry and VDP of the Ministry of Entrepreneur Development, networking of large enterprises and small and medium enterprises are being promoted.
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures	Bankruptcy Act 1976 Companies Act 1965 Companies (Winding-up) Rules, 1972	The Bankruptcy Act 1976 stipulates bankruptcy of individual person, and the Companies Act 1965 stipulates bankruptcy of legal person.
(3) Supporting structural reforms		
1) Corporate management reform support measures	ITAF of SMIDEC	
2) Support measures for new business startup, etc.		There are various venture capitals such as TUB: Tabung Usahawan Baru etc.
3) Technical capability improvement support measures		ITAF of SMIDEC etc. may be utilized.
4) Plenitude in know-how-oriented management resources		ITAF of SMIDEC etc. may be utilized.
5) Informatization measures		ITAF of SMIDEC etc. may be utilized.

6) Measures for high mechanization		ITAF of SMIDEC etc. may be utilized.
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Employment Act 1955, Industrial Relation Act 1967 etc.	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		The Ministry of Entrepreneur Development
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in Malaysia

In Malaysia, GDP was 97,523 million US dollars (1997, World Bank " Report on World Development, " 1998/99) and the value-added component ratio was 13% for the agricultural sector, 46% for the industrial sector (34% of which is for the manufacturing industries) and 41% for service industries. (ibid.)

According to SMIDEC: Small and Medium Industries Development Corporation, the Small and Medium Enterprises (manufacturing industries) occupy 91% of the number of all enterprises of manufacturing industries and 15.8% of the turnover of the whole manufacturing industries sector in 1998, and absorb 29.9% of laborers in manufacturing industries. In these figures, those of small-scale industries are not included.

There is the 7th development plan (the Seventh Malaysia Plan 1996-2000) as the middle-term national plan of Malaysia and, at the time of the survey, the next plan, the drawing up of the 8th development plan was close to the completion. Although the contents of the 8th development plan is not known, SMI: Small and Medium Industries are taken up in Chapter 9: Industrial Development in the 7th development plan and establishment of the small and medium enterprise development corporation (SMIDEC) and improvement of the policy as system are described there.

Furthermore, partly related with this, the Second Industrial Master Plan 1996-2005 was drawn up in relation with industrial development and the Manufacturing ++, which lays emphasis on the value chain, is set out as a new concept for determining the direction of the industrial development of Malaysia. In this industrial development plan, small and medium enterprises are not taken up as a new sector, which is spread over industrial sectors, and overall development is considered in the vertical industrial sub-sectors such as electric, electronic, fiber, apparel, chemical industries.

According to reference materials from SMIDEC, the component ratios of the small and medium enterprises (industrial) to the main industrial sub-sector and the small and medium-sector in Malaysia are as shown below. The ratio of export industries and domestic industries is 20% for export industries and 80% for domestic industries.

Contribution by Industry Sector, 1999

Industrial sub-sector	Component ratio
Foodstuff processing	17.4%
Metal	12.1%
Timber milling	8.6%
Non-metal	6.5%
Industrial machinery	6.0%
Others	4.3%

Source: SMIDEC Annual Report 1998

Contribution of SMIs in the Manufacturing Sector, 1998

Contribution of industrial sector	Contribution ratio
Rate of value-added	20.1%
Production	15.8%
Employment	29.9%

Source: SMIDEC Annual Report 1998

(2) Policy for small and medium enterprises

Small and medium enterprise development in Malaysia has been carried out by the Small and Medium Industries Development Corporation of the Ministry of International Trade and Industry and the Ministry of Entrepreneur Development. The former is mainly in charge of small and medium enterprise development policy in the industrial sector and the latter is in charge of protection and development of entrepreneurs and small-scale pribumi enterprises.

The Malaysian government did not draw up any basic law for small and medium enterprises. It is considered that small and medium enterprise development can be carried out with the combination of existing policy tools even without any basic law for small and medium enterprise and, at present, small and medium enterprise development is promoted based on the idea to manage with policies and plans. It is also considered that, although it is important to promote development within the small and medium enterprise industrial sector, priority shall be given to the development policy for industrial sub-sector, and, under such basic framework, small and medium enterprises should be fostered by linkage of large enterprises and small and medium enterprises, that is large enterprises foster small and medium enterprises and the government gives support to it.

In the notification of the Ministry of International Trade and Industry dated January 23, 1998, small and medium enterprises are defined as

Small enterprise:

Number of employees not exceeding 50 and the yearly sales amount not exceeding 10 million RM, and

Medium enterprise:

Number of employees between 51 and 150 and yearly sales amount between 10 and 25 million RM.

Organizations that are related to the Ministry of International Trade and Industry, such as SMIDEC and FMM: Federation of Malaysian Manufacturers has adopted these definitions.

1) SMIDEC's policy for small and medium enterprises

SMIDEC is a public corporation established on May 2, 1996 in accordance with the Seventh Malaysia Plan 1996-2000 and has been promoting the below mentioned four programs for small and medium enterprise fostering in accordance with the Manufacturing ++ which is the manufacturing industry development concept advocated by the Ministry of International Trade and Industry. Among SMIDEC's small and medium enterprise supporting programs, some are limited to pribumi enterprises, but some are open for Chinese enterprises too, and, therefore, it can be said that they are abundant full-set type supporting menu accompanied with financing, credit protection, consulting etc.

ILP: Industry Linkage Program (Plan for fostering subcontracting enterprises to foster domestic enterprises under guidance by large enterprises by tying large enterprises or advanced enterprises with Malaysian domestic enterprises)

Support for consolidation of technological and management basis

Financial support

Support for female entrepreneurs

In the technological and management basis supporting program among those programs, six components, namely, (1) technological development, (2) integration of technologies, (3) market development, (4) entrepreneur fostering, (5) development of skill, and (6) development of infrastructure, are provided for. In (1) technological development, two menus, (a) technological advisory service and (b) technological ability improvement supporting program, are provided for, and, under (a), by providing technical clinic (diagnosis of technology), workshops, seminars etc., guidance and enlightenment for technology are given and information database about available technologies are prepared. As knowledge management will play an important role in the world of coming age, SMIDEC wishes to compile knowledge base information and knowledge.

Under (b), support for improving product development and manufacturing processes, improving quality and complying with international standards, such as ISO9000 is given. As a part of this measure, factory audit is executed. Although this is carried out by dispatching specialists based on requests from small and medium enterprises as a general rule, depending on the nature of the case, SMIDEC sometimes carries out on its own discretion without receiving requests from enterprises. For example, in the case of the Year 2000 problem, SMIDEC dispatched specialists to small and

medium enterprises selected by SMIDEC's own discretion and let them execute survey and give guidance if the cases required so.

In the area of (2) integration of technologies, support is given to independent technology and ability of developing technology which small and medium enterprises have and, further, support is given to learn production technology which becomes core or to acquire technology for quality improvement or improvement in productivity.

In the area of (3) market development, matching service and creation of network between small and medium enterprises and large enterprises are carried out as the main stream based on ILP. In order to supplement this, activities for collecting information on potential markets, providing information on such market to small and medium enterprises, supporting participation to trade fairs and exhibitions, supporting creation of brands, participating to international trade fairs and dispatching missions are carried out and, through such activities, market development is tried. Those activities for market development are carried out through cooperation with chambers of commerce under MITI.

In the area of (4) entrepreneur fostering, business clinic is opened on every Wednesday from 9 o'clock in the morning until 4 o'clock in the afternoon. Anybody may visit SMIDEC and get consultation on any subjects from procedures for obtaining credit to access to ILP. It is not necessary to make an appointment. For visitors to the business clinic, support for drawing up a business plan is given upon request.

In the area of (5) development of skill, in skill developing centers in 10 places nationwide, technological training is given to employees of small and medium enterprises. With respect to contents of the training, two kinds of education, technological training for hard part such as repairing electric appliances and education for soft part such as management technology, are given. However, the objectives of this training is to give training to employees of small and medium enterprises, there is no training course for those who are managing small and medium enterprises or high-level training such as MBA course. Most of those who manage small and medium enterprises have high-level education and, therefore, there are no urgent needs for training like MBA courses. In the case of small and medium enterprises in Malaysia, it is more important to raise the skill level of employees. As 50% of expenses for such training are born by SMIDEC and the human resources development fund is given for remaining 50%, neither employees nor enterprises need to bear training expenses directly.

In the area of (6) development of infrastructure, plant areas are developed and, in some cases, factories, warehouses and apartment houses for employees, which can be used jointly, are prepared and provided. In addition, they are provided not on loan basis but free of charge. In Malaysia, as it is intended to promote economic development by strictly separating usage of land, it is basic understanding that industrial areas, commercial areas and residential areas should be clearly separated, and factories should be placed in industrial areas and industrial products should be

manufactured there, commercial activities should be carried out in commercial areas, and residential areas should be separated from those areas and the environment allowing quiet life should be maintained. Support for such purposes are available.

Financial support program by SMIDEC is operated having basis on ITAF: Industrial Technical Assistance Fund. This is a fund system which is operated based on the Companies Act 1965, and financial support with relation to 4 schemes for small and medium enterprises which are covered by ILP, which enterprise has yearly turnover of 25 million ringgit or lower and full-time employees 150 or less, and at least 70% of share capital are owned by Malaysian capital.

SMIDEC provides indirect credit from its fund for small and medium enterprises through 50 banks, within the range of 50,000 to 5 million ringgit with an annual interest rate not exceeding 10%. The first scheme is called ITAF1 and is to give financial support for feasibility study with relation to markets, technological feasibility study, survey on business planning, research on domestic and international markets and brand survey to the maximum of 40 thousand ringgit as the portion for this part.

The second scheme is called ITAF2 and is to give financial support for new products development, improvement in productivity and products improvement up to 250 thousand ringgit as the maximum as the portion for this part.

The third scheme is called ITAF3 and is to give financial support for expenses for quality improvement, coping with standardization, factory audit, and expenses for procedures for obtaining approval for ISO9000 etc. and TQC up to 40 thousand ringgit as the maximum as the portion for this part.

The fourth scheme is called ITAF4 and is to give financial support for expenses for participating domestic and foreign trade fairs and exhibitions, expenses to join foreign trade missions or expenses for printing catalogs and other promotional materials up to 250 thousand ringgit as the maximum. In addition, for automating or modernizing manufacturing facilities of small and medium enterprises, it acts as an intermediary for obtaining loans from MIDF. This system is for giving a loan for the amount up to 75% of the purchase price of facilities and machines up to 1 million ringgit as the maximum with an annual interest rate of 4%.

Since 1993, it acts as an intermediary for obtaining loans from Bank Pembangunan for small and medium enterprises in foodstuff processing industry. With the amendment of laws in 1994, all Bumiputra small and medium enterprises in manufacturing industries became to be covered by this credit system. Bumiputra small and medium enterprises in manufacturing industries can get loans from Bank Pembangunan up to 1 million ringgit with an annual interest rate of 4%. Further, project finance and working capital finance from Bank Industri for 1 or 2 million ringgit as the maximum with an annual interest rate between 3.5 to 5.0% can be obtained, and SMIDEC acts as an intermediary for this loan.

Separately from above mentioned support programs, support for female entrepreneurs are carried out, and, in this support, the limitation to manufacturing industries is also excluded. Supports are given to enterprises in the areas of manufacturing industries, education, software development, designing, packaging, marketing etc. Financial and technological supports are given as grant in accordance with the provisions of the Company Act to enterprises which are of 100% Malaysian capital, and either of which share capital female entrepreneurs own majority (51%) or have governance over assets, and which is operated by female entrepreneurs or of which president or chief executing office is a female and she owns 10% of the total assets of the enterprise.

2) Policy for small and medium enterprises by the Ministry of Entrepreneur Development While SMIDEC carries out support for small and medium enterprises engaged in manufacturing industries with rather high-level technological areas, the Ministry of Entrepreneur Development is in charge of development of puribumi enterprises manufacturing products of lower-level technology such as handcrafts or labor-oriented areas. Here also, a plan with the concept named VDP: Vendor Development Program, which is similar to above-mentioned ILP of the Small and Medium Industries Development Corporation, is carried out. It also carries out support for plan of franchise development, regional industrial development. Furthermore, the characteristics of this Ministry is that it has various banks and credit guarantee companies under its control, and actual operation of planned activities are commissioned to such organizations.

4-4-2-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

Malaysia has been trying to foster supporting industries in three fields, automobile, electric and electronics, and has achieved considerable success. For example, domestically manufactured automobile, Proton etc. has become to have very strong competitiveness in the Middle East and Africa. With respect to electric appliances and electronic products also, not only having advantages as the base for collecting and supply of parts by utilizing country's ability of collecting component parts, but also has export capability to markets such as ASEAN. With respect to electric appliances, however, Malaysia is feeling a threat from China and has no intention to aggressively compete. Considering that electronic industry, especially high-tech industry, has possibility to expand as industry, it intends to develop this area strategically. In order to lead fostering of industries relating to electronic industry and computer, it started large-scale projects with initiative of the government such as Cyber-jaya project and has been trying to consolidate new laws such as cyber laws (laws concerning electronic commerce). As far as fostering industries in this field is concerned, there are several points in which Malaysia is ahead of Japan.

As a characteristic feature of Malaysian policy for small and medium enterprise development, existence of abundant policy tools, which can be used for various small and medium enterprise development, can be pointed out although there is no Small and Medium Enterprise Basic Law. Firstly, with relation to direct financing, there are financing by above mentioned SMIDEC and grant. Further, there are systems for credit guarantee and Credit Guarantee Corporation etc. operate credit guarantee business. However, mechanism for converting guarantee risks such as the second tier

and third tier is not sufficiently established, improvement in this area of credit guarantee system will be considered.

In the area of quality control, in addition to promotion of ISO9000, there is awarding systems unique to Malaysia such as the Prime Minister's Quality Award. In that sense, Malaysia was the only country, which has a full set of systematically arranged policy tools for small and medium enterprise development, among those countries for which surveys were made this time. On the other hand, however, with respect to basic technology, there are certain points in which Malaysia is not well developed, for example, local Bumiputra enterprises cannot manufacture parts which satisfy the quality level required by Japanese or other enterprises moved in Malaysia. Further step up in such area and consolidation of system for implementation and strengthening of connection with existing system are required.

4-4-3 The Philippines

4-4-3-1 Already consolidated legal system

In the Philippines, the Constitution (promulgated on February 11, 1987) stipulates that the national language shall be the Filipino, but it also stipulates that the English shall be the official language, while the Constitution further prescribes that the Constitution itself shall be promulgated both in the Filipino and the English (Article 14).

In the Philippines, the commerce related law, labor law, intellectual property law and other laws which form the basis of activities of enterprises have been well consolidated. Also, what regulates the form of enterprises in the Philippines are THE CORPORATION CODE, 1980 and CIVIL CODE, 1949. Stock Corporations and Non-stock Corporations are regulated by THE CORPORATION CODE and General Partnerships and Limited Partnerships are regulated by CIVIL CODE, and all of these enterprises possess the corporate entities.

(1) Civil and commercial law

In the Philippines, the Commercial Code of Spain, the suzerain, was introduced in 1889, and THE CORPORATION CODE was enacted in 1907 under the control of America after the Spanish-American War. This CORPORATION CODE of 1907 retains the framework as a continental law, it has been enforced in the way and manner like an American law.

After that THE CORPORATION CODE was revised in 1980, and the form of enterprises in the Philippines is regulated by such revised CORPORATION CODE of 1980 and CIVIL CODE, 1949. Stock Corporations and Non-stock Corporations are regulated by THE CORPORATION CODE and General Partnerships and Limited Partnerships are regulated by CIVIL CODE, and all of these enterprises possess the corporate entities.

It is said that this CORPORATION CODE of 1980 was composed with a spirit to pursue an ideal of corporation system. The characteristic nature of this law lies in that the number of shareholders in a close corporation is limited to 20 natural persons or less so that the business of the corporation is

directly controlled by the general meeting of shareholders as a principle, and that for large size corporations, capital is made replete and fortified and the management responsibility is strengthened with due considerations paid to the interest of general shareholders and outside creditors, etc.

The names and opening provisions of main laws contained in the statute book are shown below:

THE CORPORATION CODE 1980

[SEC. 2] A Corporation is an artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law or incident to its existence.

[SEC. 3] Corporations formed or organized under this Code may be stock or non-stock corporations. Corporations which have capital stock divided into shares and are authorized to distribute to the holders of such shares dividends or allotments of surplus profits on the basis of the shares held are stock corporations. All other corporations are non-stock corporations.

CIVIL CODE 1949 (Law on Partnership)

[ART. 1767] By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing profits among themselves.

Two or more persons may also form a partnership for the exercise of a profession.

NEGOTIABLE INSTRUMENTS LAW 1911

[SEC. 1] An instrument to be negotiable must conform to the following requirements:

- a) It must be in writing and signed by the maker or drawer;
- b) Must contain an unconditional promise or order to pay a sum certain in money;
- c) Must be payable on demand, or at a fixed or determined future time;
- d) Must be payable to order or to bearer; and
- e) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

(2) Labor law

The existing labor law was enacted on May 1, 1974 as the Labor Code of the Philippines, and it has been substantially revised since then.

As the rights of workers, Section 8 of the present Constitution stipulates [The right of the people, including those employed in the public and private sector, to form unions, associations, or societies for purposes not contrary to law shall not be abridged].

What is stated as the right of the management side includes the Right to conduct business, the Right to prescribe rules, the Right to select employees, the Right to transfer or discharge employees, etc.

As the means of Dispute Settlement when a labor dispute takes place, there are three stages as indicated below:

- 1) Autonomous settlement by Collective Bargaining;
- 2) Settlement by optional Arbitration; and
- 3) Settlement by forced Arbitration.

When a settlement by Arbitration can not be obtained, an adjudication by the court shall be sought. The Constitution prescribes the right of juridical review on all acts including administrative dispositions. However, there has been no case of an award by arbitration which is reversed by the judiciary recorded to date.

- (3) Bankruptcy law

INSOLVENCY LAW 1909

[SEC. 1.] This Act shall be known and may be cited as the Insolvency Law, and in accordance with its provisions every insolvent debtor may be permitted to suspend payments or be discharged from his debts and liabilities.

- (4) Intellectual property law

PATENT LAW 1947

[SEC. 7.] Any invention of a new and useful machine, manufactured product or substance, process, or an improvement of any of the foregoing, shall be patentable.

[SEC. 8.] An invention shall not be patentable if it is contrary to public order or morals, or to public health or welfare, or if it constitutes a mere idea, scientific principles or abstract theorem not embodied in an invention as specified in seven hereof, or any process not directed to the making or improving of a commercial product.

LAW ON TRADE-MARKS, TRADE-NAMES AND UNFAIR COMPETITION 1947

[SEC. 2.] Trade-marks, trade-names, and service marks owned by persons, corporations, partnerships or associations domiciled in the Philippines and by persons, corporations, partnerships or associations domiciled in any foreign country may be registered in accordance with the provisions of this act:

Provided, that said trade-marks, trade-names, or service marks are actually in use in commerce and services not less than two months in the Philippines before the time the applications for registration are filed: And provided, further, that the country of which the applicant for registration is a citizen grants by law substantially similar privileges to citizens of the Philippines, and such fact is officially certified, with a certified true copy of the foreign law translated into the English language, by the governments of the Republic of the Philippines.

DECREE ON THE PROTECTION OF INTELLECTUAL PROPERTY 1972

[SEC. 5.] Copyright shall consist in the exclusive right;

- a) To print, reprint, publish, copy, distribute, multiply, sell and make photographs, photo-engravings, and pictorial illustrations of the works;
- b) To make any translation or other version or extracts or arrangements or adaptations thereof; to dramatize it if it be a non-dramatic work; to convert it into a non-dramatic work if it be a drama; to complete or execute it if it be a model or design;
- c) To exhibit, perform, represent, produce, or reproduce the work in any manner or by any method whatever for profit or otherwise; if not reproduced in copies for sale, to sell any manuscript or any record whatsoever thereof;
- d) To make any other use or disposition of the work consistent with the laws of the land.

4-4-3-2 Problems arising in enforcing legislation

It is a problem common to many Asian countries visited this time that people did not have any choice but to introduce western law over the inherent legislative system, custom and religious background, and a legal system has been consolidated superficially based on such western law, but such system has not been digested and enforced but in an insufficient manner. In addition, what characterizes the case of the Philippines is a very mixture of Spanish law which belongs to the Continental Law and American Law which belongs to the common law when it introduced the western law. While a mixture of plural different law systems can be seen in Thailand also, Thailand accepted them of its own option or decision in the formality as an independent nation, but Philippines case is different as the introduction was forced in a totally involuntary manner by a change in the suzerain countries ruling the colony. America, the second suzerain, followed the Spanish law in principle, but it made, in reality, an introduction of the English education, an establishing a judicial system of American type, an introduction of American law into enterprise act, etc., therefore, the overall legal system at present after the independence is of an American type. And as it has been based on an ideal pattern in the American legislative system, although the laws have been consolidated, a dissociation is quite distinct between the superficial legislative system and social realities.

It will be a challenge for the overall legal system of this country how well such introduced system can be digested and is made to function effectively.

4-4-3-3 Problems caused by introduction of the international accounting standards

- (1) Differences between the international accounting standards and Philippine accounting standards

Although the international accounting system has been introduced, there are still many differences. The difference related to small and medium enterprises may be compared with the table shown below. The accounting practice in the Philippines is based on Philippine Accounting System including large scale enterprises. (As there is a securities market, there are listing standards for the securities market. Therefore, a cash flow statement, consolidated closing account, accounting for pension plan, which are believed to be applicable to large-scale enterprises, are considered.)

	International Accounting Standards	Philippine Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Appraisal with the lower-of-cost-or-market method No provision
Accounts receivable	Estimated uncollectable bad debts are accounted for.	Estimated uncollectable bad debts may be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life	Reevaluated current price Depreciation in accordance with decision by the Ministry of Finance
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on number of years of effectiveness. Depreciation in accordance with decision by the Ministry of Finance
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	To be based on consolidated accounting.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency is not accepted.
Provision for taxes payable	Deferred taxes shall be accounted for	Deferred taxes may be accounted for
Profit and loss calculation	All incomes and expenses shall be accounted for.	Accounting for leasing is not yet forcedly applied.

(2) Impact the differences might have on accounting practice of small and medium enterprises

Tangible fixed assets are appraised by current price. Therefore, as long as recent inflationary price hike trend continues, the appraised value of tangible fixed assets increases every year (this increase in the appraised value does not constitute profit, but is carried as capital surplus), which in turn increases an amount of depreciation every year. The system of reckoning the unrealized profit in fixed assets may be reasonable in one way, but has not been admitted as the international accounting standards. Such system could not only spoil the accuracy in the profit and loss status of a specific year, but makes the financial status forecast for subsequent years erroneous.

4-4-3-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) Present state of tax accounting

Many of medium enterprises among non-State enterprises are believed to be joint ventures with

foreign capital. The number of large size enterprises and small and medium enterprises are about same. The accounting system of such joint venture companies is not necessarily following the Philippine accounting standards because of the necessity of reporting the accounting to the home country of such foreign capital. From a taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with a help of accounting firms. On the other hand small size enterprises in the Philippines are imagined as operating with a scale of cottage industry. They do not maintain accounting books and as their taxable income is of minor amount, taxation is normally made by rough estimate with tax survey.

(2) Role of accounting firms

Not only small and medium enterprises as joint venture with foreign capital but ordinary small and medium enterprises in the Philippines have relations with accounting firms. The accounting firms give guidance in preparing the accounts based on the Philippine accounting standards. They also prepare tax returns for such enterprises based on such accounts, and their role is recognized in this respect. However, small enterprises use the accounting firms only in a nominal sense, and accounting firms have only a minor role in this area.

4-4-3-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Other than tax laws, there are Decrees and Circulars and the enforcement of the system has been improved. But, as the organization of taxation offices is still remaining in an old state, they are not taxpayer-oriented, and organizations are tinted with corruption. The President is criticizing them. They do not have careful protection to foster small and medium enterprises. Therefore, there is no small and medium enterprise specific preferential taxation system. In the taxation system as a part of industrial policy, various measures are devised including preferential treatment for foreign capital, etc.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, the standard corporate income tax with a ratio of 32% is exempted for 4 year for investing enterprises as new projects in the non-developing field from the beginning of business as a preferential measure by the Investment Board, and for 6 years for enterprises investing in the developing field. Enterprises in the Special Economic Zone can fulfil their tax obligations with 5% tax ratio of the total earnings in place of national tax and local tax, after an elapse of said tax exemption period. Such enterprises can enjoy various preferential treatment in duties related to import and export. Small enterprises (with annual sales of 550 thousand pesos or less) are exempted from reporting the 10% VAT (value added tax).

(3) Actual state of tax examination

Tax examination is being carried out in a system in which things are determined by a negotiation. That is, instead of calculation of a taxable income based on the provisions of tax laws, an amount of tax is determined in many cases in a system in which an assumption is made based on a scale of

business involved.

Persons in charge of tax examination are not well familiar with taxation business, and taxation offices are said to still possess corrupt custom. Small and medium enterprises of Chinese origin are reputed to evade tax by preparing double or triple accounting books.

4-4-3-6 The present state of the policy for small and medium enterprises and the points at issue

Philippines' policy for small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	The Philippine National Development Plan: Directions for the 21st Century Medium-Term Philippine Development Plan 1999-2004	
Small and medium enterprises development plan	The Philippine SME Development Strategy: forging a truly dynamic and competitive SME Sector	It is also covered in Chapter 4: Industry and Services in the Medium-Term Philippine Development Plan 1990-2004.
Organization in charge of policy	Small and Medium Enterprise Development Council Bureau of Small and Medium Business Development. Department of Trade and Industry	Small and Medium Enterprises Development Council works as a supervising committee, while Bureau of Small and Medium Business Development, Department of Trade and Industry is an organization to implement the policy.
(1) Small and medium enterprise law	Magna Carta for Small Enterprises (R.A.6977), January 24, 1991	Formal name is Republic Act No. 6977 (as amended by RA 8289).
(2) Consolidation of management basis		
1) Financial measures	There is a regulation applied to general commercial banks on the framework of financing to small and medium enterprises. There are direct financing and credit protection systems for small and medium enterprises by the SBGFC.	
2) Taxation system measures		
3) Organizing measures	Small and Medium Enterprise Section, Philippine Chamber of Commerce and Industry	
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures	Insolvency Law	
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.	There is venture fund in the SBGFC.	
3) Technical capability improvement support measures		Carried out by the Small and Medium Enterprises Research Institute, Philippine University, etc.
4) Plenitude in know-how-oriented management resources		

5) Informatization measures		Carried out by the Small and Medium Enterprises Research Institute, Philippine University, etc.
6) Measures for high mechanization		Carried out by the Small and Medium Enterprises Research Institute, Philippine University, etc.
7) Regional small and medium enterprise measures	Regional chambers of commerce and industry	
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor Code	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO Governmental organizations such as SBGFC, etc. also are using NGO.
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in the Philippines

In the economy of the Philippines, GDP was 83,125 million US dollars (1997, World Bank " Report on World Development, " 1998/99) and value-added component ratio was 20% for the agricultural sector, 32% for industrial sector (of which 22% was for manufacturing industries), and 48% for service industries (ibid).

According to the " Small Business in the Philippines, 1996, " the number of enterprises belonging to small and medium-size sector was about 220 thousand, and there were 1,242 large enterprises, and 1,114 medium enterprises, and 19,206 small enterprises, then the number of small-scale enterprises was 202, 720 (manufacturing industries and service industries put together). The large enterprises achieved sales of 625,500 million pesos (67%) and employed 665,501 persons (3%), which leaves the ratio of sales of 33% and employment absorption ratio of 97% (both ratio include small-scale enterprises.).

Number of enterprises, sales, number of employees by size in the Philippines

	Number of enterprises			Sales (million pesos)			Employment		
	Manufacturing industries	Service industries	Total	Manufacturing industries	Service industries	Total	Manufacturing industries	Service industries	Total
Large enterprises	895	257	1,242	590,700	34,800	625,500	553,778	112,723	666,501
Medium enterprises	753	361	1,124	79,000	9,400	88,400	96,570	51,298	147,868
Small enterprises	9,350	9,856	19,206	127,900	36,300	164,200	258,338	236,891	495,299
small-scale enterprises	79,032	123,688	202,720	24,700	31,400	56,100	317,896	477,650	795,546
Total	90,030	134,164	224,194	822,300	111,900	934,200	1,226,582	978,562	2,105,144

Source: Small Business in the Philippines, 1996

As the long term national project of the Philippines, the Philippines National Development Plan: Directions for the 21st Century has been prepared in 1998 with the NEDA: National Economic and Development Authority working as the core of the preparation work. This plan shows a vision that the country intends to be a member of advanced countries in the early stage of the Century 21, and while the agricultural sector having competitiveness is maintained, a modern industrialized country having modernistic commercial sector is to be built. It is noteworthy that this plan stresses the sustainable growth and regional development for achieving such vision, and the close cooperation between the central government and local public entities are emphasized for that end, although the plan does not mention small and medium enterprise sector.

The development of small and medium enterprises was mentioned in the Medium-Term Philippine Development Plan 1999-2004, the medium-term national plan of the Philippines, in which it was recognized that small and medium enterprises had problems in financial aspect, material procurement aspect and technical aspect, and describes the measure to be taken by the Department of Trade and Industry for solving such problems. Main features of such measures are summarized in the following six points:

Strengthening the network of raw material producers and manufacturing industries;

Information exchange among producers;

Promotion of cooperative relationship among large enterprises and small and medium enterprises including enterprises located in industrial areas;

Development of scheme for financial supports including those for small-scale enterprises;

Implementation of the Magna Carta for Small Enterprises and strengthening the monitoring (particularly the financing frame); and

Fortification of vocational training and education for bringing up enterprisers.

(2) Policy for small and medium enterprises

For development of small and medium enterprises in the Philippines, the Small and Medium Enterprise Development Council functions as the policy supervising organization under the framework of the Magna Carta for Small Enterprises (R.A. 6977), and the Bureau of Small and Medium Business Development, Department of Trade and Industry works as the policy implementation organization.

The policy for small and medium enterprises has been prescribed as the Philippine SME Development Strategy: forging a truly dynamic and competitive SME Sector, which has been published with the responsibility of the Small and Medium Enterprise Development Council, with the organizational structure mentioned above serving therefor.

The purport of this Strategy is represented by the policy that dynamic and competitive small and medium enterprises are developed with a leadership of private sector based on the market-oriented spirit, since the development of small and medium enterprises is very important as they will play vital role among Philippine economy in the century 21.

And sub-sectors for which development efforts should be focused are selected, setting forth the measures for promoting the linkage among enterprises, promoting the development of technology and researches, supporting the bringing up of human resources, and improving the financing frame for small and medium enterprises.

Also, for example, ceramics, furniture, textile, gem, etc. are named as the industrial sub-sectors in which small and medium enterprises in the Philippines can have competitive power, with the same level and status as electric appliances, electric parts, machine parts, professional services, etc., which give an impression that the policy is being promoted with traditional handicraft industries and modern industries being mixed together. Such mixture could be a result of the situation that a promotional plan and a development policy with priority and strategy can not be worked out because of the system in which the plans and policies in the Philippines are compiled with what are presented by related organizations with a pyramid building fashion.

1) Financing for small and medium enterprises

As the framework of financing for small and medium enterprises based on the Magna Carta for Small Enterprises, commercial banks under supervision of the Central Bank must assign 6% of financing fund to small enterprises and 2% for medium enterprises. If a commercial bank does not finance small and medium enterprises, such financing fund frame has to be consigned with the SBGFC, Small Business Guarantee and Finance Corporation. That is, commercial banks must provide the total of 8%, comprising said 6% and 2%, of fund to small and medium enterprises, thus they can only have a choice of either financing it directly or indirectly through the SBGFC. However, in reality, the 8% financing to small and medium enterprises is not carried out neither directly nor indirectly.

The SBGFC is a public corporation (policy financing agency) which was established in 1991 under the provisions of the Magna Carta for Small Enterprises as an institute for making the financing and guarantee of credit for small and medium enterprises, and is under direct supervision of the Department of Trade and Industry, and collects fund of 1 billion pesos from five governmental financing institutions: LBP: Land Bank of the Philippines, PNB: Philippines National Bank, DBP: Development Bank of the Philippines, SSS: Social Security System, GSIS: Government Service Insurance System. The SBGFC is increasing menu of financing such as SBGFC Venture Capital Program, etc., in addition to a direct financing and guarantee of credit, for serving small and medium enterprises. Also, there are some tools which may be used in credit guarantee and financing for development of small and medium enterprises, such as the Enterprise Stabilization Guarantee Fund, Transaction Guarantee and Financing Program.

2) Technical supports

Philippine Chamber of Commerce and Industry is actively carrying out training at practical work level through regional chambers of commerce and industry. Such training is characterized by high-level training for small and medium-size businessmen and enterprisers, such as education of framework of preparing business plans for enterprisers, in addition to practical training on book-keeping for employees of small and medium enterprises.

Also, as a trial of joint work with industry-university cooperation, enterprise information network is formed and development of small and medium enterprises is being tried with the Institute of Small Scale Industry, Philippine University, working as its core organization.

3) Measures for micro-size enterprises

As the measures for micro-size enterprises including micro-finance, the SBGFC is providing fund by using NGO, and NGOs of the world scale are making some micro-financing. Thus, measures for small-scale enterprises are actually carried out with the leadership of NGOs.

(3) Basic law for small and medium enterprises

The formal name of the Magna Carta for Small Enterprises (R.A. 6977) is Republic Act No. 6977 (as amended by RA 8289), An act to promote, develop, and assist small and medium scale enterprises through the creation of a small and medium enterprise development (SMED) council, and the rationalization of government assistance, programs and agencies concerned with the development of small and medium enterprises, and for other purposes. As the name indicates, it prescribes the organizations, and framework of measures as well as budget for development of small and medium enterprises.

First, concerning the definition of small and medium enterprises, Article 3 of this Act defines as follows:

Small-scale enterprise: Enterprise with an asset of below 1,500,000 pesos, excluding land, building, equipment and facilities;

Small enterprise: Enterprise with an asset of 1,500,001 - 15,000,000 pesos;

Medium enterprise: Enterprise with an asset of 15,000,001 - 60,000,000 pesos.

Also, this Act clarifies the role of government and role of private sector, and prescribes an establishment of Small and Medium Enterprise Development Council as a policy supervising agency, and of organizations for financing, credit guarantee for small and medium enterprises.

This Act states that the Small and Medium Enterprise Development Council may revise the classification criteria for small and medium enterprises, and desires have been expressed for revising the existing criteria in view of recent inflation. However, the Philippine government is confident that

this Act can serve as the core for promoting their policy for small and medium enterprises, and believes that the Act provides the rules and guidelines for promoting the development of small and medium enterprises in the country with leadership of private sector and local self-government bodies, in other parts than the criteria on classification of enterprises.

4-4-3-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

In the small and medium enterprise development policy of the Philippines, traditional handicraft aspect and modern industrial aspect are mixed at present. While the Philippine government recognizes that the modern industrial element should lead the Philippine industry in the century 21, it does not have a firm concept as to what sub-sector can take concrete leadership at the present stage. Also, as the basic thought of the Philippine government is on the completely free market competition, it has no intention to take a protectionist policy or a distinctly concentrated support policy.

To start with, the legitimacy of the Magna Carta for Small Enterprises is rather uncertain, and it was explained by those in an office in charge as “ Although it is not a law formerly approved in the Diet, it was signed by the president and governmental departments related participated in its preparation, thus those working in the government are obliged to cooperate to the implementation of this Magna Carta for Small Enterprises. And in that sense, it is effective law although it is not formal law. ” Also the explanation continued as “ What has been formerly approved by the Diet is only the Medium-Term Philippine Development Plan. But since the Magna Carta for Small Enterprises was prepared based on this Medium-Term Philippine Development Plan, the Magna Carta is effective in that sense, ” and “ Also, the Small and Medium Enterprise Development Council is a conference body, an establishment of which has been legally approved by the Diet. ” Then it leads to a complicated position which is difficult to understand that a policy and a decision declared by this Council will also be effective.

But, the largest problem must be the fact that no clear vision has been established as to which industrial sub-sector should work as a motive power in implementing the industrial policy, therefore the position of small and medium enterprises can not be clearly identified, and the system of financing the small and medium enterprises is not necessarily effectively functioning, and further that technological supports and incubation are not satisfactorily working.

Although the government intends to place an emphasis in an incubation and high-tech field for bringing up locomotive sub-sector in the next generation, it is not able to find effective means for achieving that objective. Principally the lack of consistency and sustaining efforts as seen in an attitude of jumping to the frontier technology and advanced industry before fortifying the basis under the situation where the foundation of manufacturing sector is weak.

Therefore, policies for fortifying the basis of manufacturing industries such as bringing up the support industries and establishing the network among enterprises, and a consolidation of laws and

regulations for that end are indispensable. As the country has succeeded the legislation of common law, it will be necessary to review the laws related to the policy for fortifying the basis and to adjust the same, and at the same time to enact new necessary laws.

4-4-4 Thailand

4-4-4-1 Already consolidated legal system

Reform of system in financial sector, etc. is being promoted in Thailand with a guidance by IMF, and revisions and enactments of laws related to economy are being made one by one. Main laws involved are 5 laws related to disposition of bankruptcy (revised bankruptcy law, law to establish a bankruptcy court, revision of law for summary proceedings, 2 revisions for law on security execution procedures), 2 laws related to competition, condominium law, revision of land law, law on lease of real estate for commercial or industrial use, Foreign Business Act, etc.

Under such background, “ Economic system reform seminar; economic laws and development - Thailand and Japan ” was held on December 2 - 3, 1999 as a joint sponsorship of the Ministry of International Trade and Industry, JETRO, Asian Economy Research Institute of Japan, Ministry of Industry, Ministry of Commerce and Law Department of Tamath University of Thailand, where reports were made on competition laws, consumer protection laws, bankruptcy laws, investment• industry development laws, Small and Medium Enterprises laws, environmental laws of both countries.

(1) Enterprise law

In Thailand, civil code and commercial code is consolidated into one law named as CCC: Civil and Commercial Code. The CCC prescribes about Partnership and (Private) Limited Company as organizations for business, while the Public Limited Company Act prescribes about publicly held companies.

Partnership is divided into Ordinary Partnership and Limited Partnership. An Ordinary Partnership consists of only single type of Partners and the Partners assume joint and unlimited responsibilities on all liabilities of the Partnership. Ordinary Partnership may register itself with the Ministry of Commerce or may not at its option, and when registered it is called as “ Registered Ordinary Partnership. ” There are two types of Partners in a Limited Partnership, that is one assuming the liabilities within the limit of investment to the Partnership, and the other one assuming unlimited responsibilities on all liabilities of the Partnership, and a Limited Partnership has an obligation to register itself. From what is described so far, Partnership may be classified into three types of Unregistered Ordinary Partnership, Registered Ordinary Partnership, and Limited Partnership.

For establishing a Limited Company 7 or more founders are required, and for establishing Public Limited Company 15 or more founders are required, and they need to register their Articles of Incorporation. There is no minimum capital system. Amount of fund required for establishing a Limited Company will be 5 bahts **I** 7 persons = 35 bahts.

The Public Limited Company Act was enacted in 1978, but as the regulations contained therein were

too severe, only about 20 companies have been established as public limited companies even if 10 years have elapsed since then. Therefore, the securities transaction law was made in 1992, and at the same time the Public Limited Company Act was revised.

A Foreign Business Act was enacted on November 24, 1999, and was to be enforced from March 3, 2000. Foreigner here include persons who do not possess Thai nationality, juridical persons who are not registered in Thailand, juridical persons in which more than half of total capital is owned by foreigners, Registered Ordinary Partnership and Limited Partnership in which persons not having Thai nationality are Partners, etc.

While the Foreign Business Act contains provisions on types of business in which foreigners can not engage in business. But the number of such business was remarkably reduced from that in the old Act. For Foreign Business, a minimum capital provision is applied. There are 8 registries in Bangkok. The total number of juridical persons registered with the Ministry of Commerce (MOC) as of June, 1999 was 403,747. These registered juridical persons have an obligation to report financial statements periodically, and such financial statements are offered for public inspection.

The number of juridical persons newly registered in the last 3 years by type of corporations are as shown below:

	Number of Firms		
	Year of Registration		
	1999	1998	1997
Limited Company	15,249	12,438	16,608
Limited Partnership	9,378	7,746	12,258
Ordinary Partnership	50	17	38
Public Company	6	5	11
Total	24,683	20,206	28,915

(2) Bankruptcy law

The bankruptcy law has been enforced since 1940, but this bankruptcy law of 1940 contained provisions on liquidation only. While minor revisions had been made on this Act, substantial revisions were made in 1998 and in 1999. The 1998 revision introduced reorganization proceedings of bankrupt enterprises, and the 1999 revision fortified the reorganization proceedings and reduction of obstacles incidental to liquidation proceedings. Also, while a case of bankruptcy had been under jurisdiction of general civil courts, a bankruptcy court which handles bankruptcy cases, was established in June, 1999 under a law of April, 1999.

(3) Labor law

The Labour Protection Act, which is the basic law related to labor regulations, was promulgated on

February 20, 1998 and was enforced at 180 days later. This Act contains many provisions providing ample protection of workers. Although the time when this Act was processed was a time of boom in economy, the economy faced a crisis after that, thus the Act is facing many problems in its enforcement. Also, the ministerial ordinance to enforce this Act has not been issued yet. The Act was enacted under the Announcement of the Revolutionary Party as a tentative measure until such ordinance is issued.

To cover labor accidents, there is a labor accident insurance system which covers employees of work place which employs 10 or more workers, and compensation is provided for absence from work for 3 days or longer due to a labor accident. Training of safety managers is prescribed by law. ILO, UNDP and long-term experts from Japan gave guidance on safety and sanitation. Also Germany gave guidance on vocational training.

Provisions of the labor law are far advanced than the reality in the country, and there is a possibility of problems arising as the consciousness of workers rise. When dispute is not settled by arbitration, an adjudication by labor court will be sought, but judges sometimes suggest reconciliation, thus there has been no case so far in which an adjudication is sought. Also, concerning unemployment insurance, a creation of the system is prescribed in the schedule of law, but the time of such creation has not been fixed.

There is no Cabinet Order in Thailand, and an enforcement order is given as a Ministerial Regulation. However, the process of formation of the enforcement order is close to the Cabinet Order in Japan and requires conference with ministries concerned.

(4) Intellectual property right law

Law related to Trade Secret is a consolidation of laws in response to the TRIPS (Trade Related Aspects of Intellectual Property Rights) treaty. The definitions in such law is similar to those in the TRIPS treaty. It was responded by the revision of the Unfair Competition Prevention Law in Japan, but Thailand made a new law.

Recently Patent Law was revised (enforced on September 27, 1999) and the Petty Patent system was created. Number of applications made so far is about 200, and about 50 cases are being applied per month. 96% of such applications are domestic applications. Although a registration is to be made without examination, as there is no patent attorney system in Thailand, 90% of applications are rejected as improper in the examination of formality, and then guidance is provided on the form of application. Patent application is not requested through lawyers as their fee is too expensive. It is not clear whether the Petty Patent system is contributing to development of small and medium enterprises or not, as time since its enforcement is too short. Workshops and seminars are held to disseminate information on this system.

Concerning trademark, many of the applications are from domestic sources, while 90% of patent applications are from foreign origin. This may be partly resulted from the fact that the trademark law

was established in 1931 and thus has a history of close to 70 years, but the patent law was enacted in 1979 and has a history of about 20 years only.

Also, intellectual property rights are mostly involved in criminal cases but little number of civil cases are seen in Thailand.

Further, the government has a policy to actively promote the regional cooperation in the ASEAN as well as bilateral cooperation with each country, and is aware of the need for fortification of cooperation in the aspects of studies and research.

(5) Transaction of securities

On June 21, 1999, the Market for Alternative Investment (MAI), which is the second stock market, was established. This is intended for procuring fund for small and medium enterprises. The MAI is expressing a concept of “ Regeneration and development of small and medium enterprises, ” and is providing not only the means of securing fund but the guidance over broad range of activities of small and medium enterprises including internal auditing and corporate governance. It aims to let the small and medium enterprises advance from “ one-man business firm ” to “ enterprise. ”

The main objectives of the MAI are following three points:

- (1) To provide opportunities of securing fund for small and medium enterprises;
- (2) To connect venture capitalists and small and medium enterprises;
- (3) To promote the Debt Restructuring through the reforming debts to shares in the stock market.

4-4-4-2 Problems arising in enforcing legislation

The conditionality agreed by Thailand with IMF in 1997 included, in addition to three pillars intending stabilization of economy (stabilization of foreign exchange, retrenchment in finance, tax increase), a review and reform of the system on accounting and auditing besides the enactment of laws for reform of economy. For example, in the beginning of 1998, Thailand agreed to assign obligation of providing Auditor’s Committee to listed enterprises. An Auditor’s Committee consists of three or more external directors and must include at least one who is familiar with accounting and finance. This was intended to share roles properly with internal auditors for securing the independence of auditing and upgrading its quality.

The obligation of providing the Auditor’s Committee has a dead line set at the end of December, 1999, and as of the end of December, 1999, 336 enterprises have provided the Committee out of 389 listed enterprises. The 53 enterprises which have not provided the Committee comprise 22 ordinary enterprises (which are given a deferment period of 6 months), 21 enterprises suspended from making business for long term (which are given a deferment period of 6 months, and in the event the enterprise which can not provide the Committee within a period of further 3 months which is

provided as an extended deferment period, the enterprise will be delisted.), 6 enterprises which is under the business rehabilitation law, and 4 financing institutes.

However, it has been pointed out that even if just the system is matched with international standards or the auditing standards in the USA, actual business practices would not be able to follow the system. It is also pointed out that concerning the small and medium enterprise support project to which Japan has been cooperating includes a enterprise diagnosis system as an important element, the relationship between this diagnosis system and the reform of system which includes enactment of economy reform related laws mentioned so far and review and improvement of the accounting and auditing system is not certain. Here, what will be covered by the Americanization such as auditing system by certified public accountant and the Auditor's Committee system, etc. are only 389 listed enterprises, while most of the small and medium enterprises are private companies. Thus, the alienation between public companies and private companies in the corporate system aspect will become further greater.

It has been also pointed out that main members of law enactment deliberation committee are mostly those who received their legal education in Europe, and have problem in getting familiar with the trend of Americanization being promoted by the international organization, which is constituting big problem in the reform of legal system. It is said that in Thailand, in the Ministry of Foreign Affairs and Ministry of Justice many persons who have had their schooling in Europe are powerful, but in organizations related to economy those who learnt in the USA have overwhelmingly great power. And it has been pointed out that such difference in way of thinking and opinion is coming out in each stage related such as in the law enactment committee, during the process of deliberation in the Diet and in actual field of law enforcement.

Also, the enterprise law in Thailand contains no definite provisions as to which one of the international standards or Thai standards are employed as the accounting standards, and it will be necessary to clarify this point.

While the bankruptcy law has been substantially revised, a problem remains in bankruptcy of multinational enterprises. The present bankruptcy law is based on the principle of territorial jurisdiction, but as the corporate rehabilitation process has been introduced, the problem involved are complicated. That is because many creditors of reorganized enterprises are foreigners. The problems involved include:

- (1) Acknowledgement of foreign cases and foreign attorneys or representatives;
- (2) Handling of foreign creditors;
- (3) Repatriation Assets
- (4) Problem of collision of laws.

Particularly, the problem exists in the situation that an acknowledgement and enforcement of a foreign case are not approved in either civil cases or bankruptcy cases under the legal system of Thailand, thus it is urgent requirement to consolidate the legal system concerning such collision of laws.

As has been explained above, the guidance which have been provided along with the financing from the IMF for eliminating structural elements for currency crisis, have affected the reform of laws related to economy in various fields. Here, effective measures for reform may be seen, but on the other hand it is inviting antagonism against the pressure from abroad based on the nationalism from group of holders of vested rights such as financial circles, thus the legislation mentioned above contain traces of many compromises made in this respect. It is said that even during the process of deliberation for legislation, severe counter argument was expressed as saying “ forced acceptance of system of advanced countries ” or “ selling the country to foreign capital, ” etc. Further, a constitution court in which unconstitutionality of the agreement with IMF (conclusion of a treaty without approval of the Diet) was held, taking much time in reaching compromise with such counter argument.

Further, even after the revised bankruptcy law was enforced, the newly installed enterprise rehabilitation proceedings have been taken only in two cases, and it is said that there is a movement for adopting another revision of this law.

4-4-4-3 Problems caused by introduction of the international accounting standards

(1) Difference between the international accounting standards and Thai accounting standards

Although an introduction of the international accounting standards has been initiated, there are still a number of differences. The differences related to small and medium enterprises may be compared by the table shown below. All enterprises in Thailand including large enterprises are based on the Thai accounting standards. (There are securities market for large enterprises and another securities market for medium enterprises, and there are listing standards for such markets. Therefore, a cash flow statement, consolidated closing of account, accounting for leases which are believed to be applied to large enterprises, are considered.)

	International Accounting Standards	Thai Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Appraisal with the lower-of-cost-or-market method No provision
Accounts receivable	Estimated uncollectable bad debts are accounted for.	Estimated uncollectable bad debts may be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life	Cost or current price (market value) method Depreciation in accordance with decision by the Ministry of Finance.
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses are to be reckoned up on accrual as a principle. However, it may be amortized over the number of effective years. Depreciation in accordance with the decision by the Ministry of Finance.
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market-method needs to be applied.	To be based on consolidated accounting.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency may be accounted for. Remarks are necessary.
Provision for taxes payable	Deferred taxes shall be accounted for	Deferred taxes may be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Accounting for pension plan is under study.

(2) Impact the differences might have on accounting practice of small and medium enterprises

Adopting the market value method for appraising tangible fixed assets is the accepted method. As a result, in addition to the burden of surveying the current price of fixed assets every year, cost accounting accuracy is a concern due to the difficulty in estimating depreciation expenses caused by the fact that it is difficult to predict how the price of each fixed asset will fluctuate every year due to the inflationary tendency in recent years.

Further more, as personnel expenses of medium-size enterprises cannot be considered accurate unless the accounting of pension plan is introduced, the profit and loss of a specific year cannot be reported correctly, and as a result, the financial forecast for subsequent years could become erroneous. (The World Bank is planning a proposal for improvement in the accounting standards and auditing standards in the building capacity for financial accountability and good governance project.)

4-4-4-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital, and because of necessity of reporting the accounting to the home country of such foreign capital, the Thai accounting standards are not necessarily followed. For taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, small enterprises of Thailand are supposed to be business of a cottage industry scale. Accounting records are not prepared and at the same time their taxable income are of a minor level, thus they are usually taxed with rough estimates in tax examination. Also, even small enterprises have to receive an audit by accounting firms in Thailand without exception, but it is criticized that such enterprises just sign whatever records prepared by the accounting firms without reading what is in such records.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms, and accounting firms usually give guidance in preparing accounts based on the Thai accounting standards. And they prepare tax returns for such enterprises based on such accounts, and in this respect play a certain role. But, while all companies in Thailand must receive audit, one accountant can not audit more than 300 enterprises, and the number of accountants in the country is merely 4 to 5 thousands, thus it is questionable how far these accountants are making satisfactory audit. Further, as small enterprises only use accounting firms in a nominal sense, the role of accounting firms is very limited.

4-4-4-5 The present state of the taxation system and the points at issue

(1) Tax collection system

The operations of the taxation system have been improved through a strict application of value-added tax and use of computers. The organization of taxation offices is not taxpayer-oriented, and there is no concept of careful protection to foster small and medium enterprises. Thus, there is no small and medium enterprise specific preferential taxation system, and there is little or no preferential considerations in industrial policy except preferential treatment of foreign capital. The value-added tax system requires some office works on the side of taxpayers in filing return being made every month, but it has an effect of preventing an evasion of tax.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. (Small enterprises with the sales of below 600 thousand bahts are exempted from filing return on value-added tax. Small enterprises with sales of 600 thousand bahts to 1.2 million bahts are allowed to pay 1.5% of sales as a simplified means in place of the 10% value added tax.) Standard corporation income tax with ratio of 30% is exempted for the maximum length of 8 years for joint venture companies with foreign capital. (Loss may be deducted in offset during a period of the following 5 years.) Enterprises located in an incentive area can enjoy a reduction of 50% of the income tax for a

period of additional 5 years after said exemption period expires. Also such enterprises may make duplicated deduction expenses of city water, electricity, transportation for a period of 10 years. Enterprises making export can enjoy substantial reduction of or exemption from import/export duty.

(3) Actual state of tax examination

The number of staffs in the taxation offices is about 4,000 and a tax examination is made by examining the tax return documents and visiting the companies involved as required. As a pursuit of the value added tax can be made by use of computers, sincere and serious investigation may be expected.

4-4-4-6 The present state of the policy for small and medium enterprises and the points at issue Thailand's policy for development of small and medium enterprises

Thailand's policy for development of small and medium enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	The Economic Stimulus Package, 1999	It is not certain whether the 8th economic and social development plan exists or not.
Small and medium enterprises development plan	Master Plan of Small and Medium Enterprises Development, 1999	
Organization in charge of policy	Bureau of Industrial Promotion Policy and Planning, Ministry of Industry	
(1) Small and medium enterprise law	SMEs Promotion Act	
(2) Consolidation of management basis		
1) Financial measures	SICGC: Small Industry Credit Guarantee Cooperation SIFC: Small Industry Finance Cooperation	
2) Taxation system measures		
3) Organizing measures	Thai Chamber of Commerce Thai Federation of Industry	
4) Fair trade promotion measures	The Business Competitive Act, 1999	
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures	Bankruptcy Law of Thailand	
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.	SME Institutes, Thammasat University	
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization	SME Institutes, Thammasat University	
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		

9) Logistics streamlining measures		
10) Labor measures		
11) Energy and environment measures	Factory Law of 1992 related to environment	
12) Internationalization measures	Export and Import Bank of Thailand	
(4) Small-scale business measures		
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in Thailand

In the economy of Thailand, GDP was 157,263 million US dollars (1997, World Bank " Report on World Development, " 1998/1999) and the value-added component ratio was 11% for the agricultural sector, 40% for the industrial sector (of which 29% was for manufacturing industries) and 50% for service industries (ibid).

According to the data in the final report by Mizutani, an expert in the small and medium enterprise development project conducted in June, 1999, the small and medium enterprises in Thailand represented 98% of the total number of enterprises in manufacturing industries and 50% in the number of employees, and played an important role in export of light industrial products and supply of parts to the assembly industries.

Number of Small and Medium Enterprises in Thailand

	Small enterprises	Medium enterprises	Large enterprises	Total
Definition (number of employees)	- 50 persons	51 - 200 persons	200 persons -	
Number of enterprises undertaking business	116,807	7,401	2,603	126,811
Ratio	92.1%	5.8%	2.1%	100.0%
Number of employees	882	706	1,563	3,152
Ratio	28.0%	22.4%	49.6%	100.0%

Note 1: At December, 1997

Note 2: The number of employees shown was in the unit of 1,000 persons.

Source: Department of Industrial Works, Ministry of Industry

The 7th Economic and Social Development Plan covering the period of 1992-1996, which may be regarded as the national plan of Thailand was published by the National Economic and Social Development Agency, but it was not certain whether the 8th Economic and Social Development Plan was prepared or not at the time this survey was made. But even if it was prepared, it is certain that such plan must have been upset by the Asian Economic Crisis.

After the Asian Economic Crisis, the Economic Stimulus Package, 1999, which is the national plan which takes place the 8th Economic and Social Development Plan, was prepared as the counter-measure to the crisis and for rebuilding of the economy. And various plans have been prepared

including one for financial reform according to the Package and are being carried out, and screaming statements by some government officials were heard that the Thai government was too busy in implementation of the Package and rehabilitation of economy to make a long-term plan.

(2) Policy for small and medium enterprises

However, it is an agreed view in the government that the development of small and medium enterprises is an important theme in any event and are important pillars for shouldering the economy of Thailand, and for that end, small and medium enterprise development policy of Thailand is being promoted along with the Master Plan of Small and Medium Enterprises Development, 1999 prepared with a support of Japan (Mizutani Mission).

This Master Plan of Small and Medium Enterprises Development places emphasis in the following six measures:

Enacting a basic law for small and medium enterprises;

Introducing an enterprise diagnosis system;

Finance strengthening policy such as consolidating a credit protection system, establishing financial institutions specialized in small and medium enterprises, establishing an equity-finance promotion system for small and medium enterprises, etc.;

Supports for fortification of technical and management capabilities starting with a comprehensive circuit guidance program, technical supports aiming at the global standards, production management and quality control with TQM, ISO, etc.;

Bringing up human resources lead by a systematic support for promotion of training for small and medium enterprises; and

Consolidation of business environment such as fortification of export promotion activities, measures for enhancing the efficiency in distribution system, supports for information-oriented system in small and medium enterprises.

And the Master Plan also is taking into consideration:

Promotional measures by types of business starting with the development policy for supporting industries, and

Measures for development of regional small and medium enterprises.

While the SMEs Promotion Act was under deliberation by the Diet when this survey was made, it was approved by the Diet immediately after the survey in Thailand was completed (February, 2000).

Concerning the definition of small and medium enterprises which should be prescribed under this Act, it was prescribed in the Fundamental Frame of Master Plan of SMEs Development, August 23, 1999, which may be regarded as the original plan for the Act, as follows (They were defined respectively as “ small and medium enterprises which do not exceed the asset scale and number of employees indicted below ”):

	Scale of asset (million bahts)	Number of employees (persons)
Manufacturing industry	200	200
Service industry	200	200
Distribution industry	100	50
Retail business	50	30

The Fundamental Frame of Master Plan of SMEs Development, August 23, 1999

Concerning the introduction of enterprise diagnosis system, the second item in the Master Plan, the TPI: Technical Promotion Institute is working as an enforcing organization, and (1) building of diagnosis system, (2) Training for bringing up small and medium enterprise diagnostic specialists, (3) diagnosis of the small and medium enterprises themselves in Thailand are being carried out, and in the action (2), already the training of 300 or more persons including primary class and middle class has been conducted (99 persons in the middle class). (At the time of this survey.)

And in the fourth item of the action for the Master Plan and the item (3) above, diagnosis of 171 enterprises have been conducted and the diagnosis of 40 enterprises is left incomplete (as of the time of this survey), and the interest of enterprise side is drastically higher than what was expected by those persons in charge.

1) Financing for small and medium enterprises

The action of the item 3 of the Master Plan is being carried out with a scheme of the SIFC: Small Industry Finance Corporation, but the scale of the SIFC is small and the financing business itself is not so strong as an industry while a financial reform is in progress, thus a prospect in the financing to small and medium enterprises is still not clear.

Also, the SIFC defines enterprises based on fixed assets for a convenience of financing operation, classifying enterprises with the fixed asset of 50 million bahts or less as small enterprises and one with 200 million bahts or less as medium enterprises.

2) Technical supports and training

While Thai Chamber of Commerce and Industry is conducting a short term training course for practical works such as bookkeeping, etc., the Chamber is further operating a commercial university of its own conducting rather high level education and bringing up of human resources.

The Chamber is also accepting students from neighboring countries, such as Laos, etc. There are other cases of chambers of commerce and industry conducting short term vocational training such as bookkeeping, etc., and seminars for enterprisers, but no or little cases of operating a commerce university has been known. Also, an organization making such high level education of management technology and research system of its own like the Industrial Efficiency University in Japan is effective and necessary for development of small and medium enterprises, thus this trial being made by the Thai Chamber of Commerce and Industry attracts keen attention of people concerned.

4-4-4-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

When the small and medium enterprise development policy in Thailand is supposed to be carried out in a format following the Master Plan of Small and Medium Enterprises Development, 1999 of Mizutani Project, the full set of small and medium enterprise development policy made in Japan would be carried out. And if such system is completed in full set, next theme is supposed to be that the major work will be shifted to export promotion and development of high technology and international development (the Mekon River Basin, Triangle boundary Area).

Also, there is a conception that the development in the Mekon River Basin is promoted in coordination with the regional industrial development with the Mekong Regional Law Center (MRCL) with Tamath University serving as the core, and Prime Minister Obuchi of Japan expressed his agreement with the conception at the time of his visit to Thailand. Therefore, preparation for providing supports with university-industry cooperation will be necessary in the field of international regional development. This means a consolidation of related system involving not only Thailand but also such neighboring countries as China, Laos, Cambodia, Vietnam.

4-5 ASEAN (Countries shifting to market economy)

4-5-1 Cambodia

4-5-1-1 Present state of legal system in planning stage

The present Constitution of the Kingdom of Cambodia was enacted on September 21, 1993. In this constitution the Chapter 5 is titled as Economy, where an adoption of market economy system is declared as follows:

Article 56:

The Kingdom of Cambodia shall adopt the market economy system. The preparation and process of the economic system shall be determined by the law.

Article 63:

The State shall respect market management in order to guarantee a better standard of living for the people.

The property right is prescribed as follows:

Article 44:

All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land. Legal private ownership shall be protected by law.

The right to confiscate properties from any person shall be exercised only in the public interest as provided for under the law and shall require fair and just compensation in advance.

While a consolidation of economy related laws is planned based on the market economy under the constitutional provisions mentioned above, its progress is not so satisfactory.

At present, drafts of civil code and code of civil procedure are being prepared with a support from experts from JICA, etc. In the field of Commercial Law, it is prescribed in the Directive 241 dated February 28, 1996 that common law or Anglo-Saxon Law is to be adopted.

The Penal Code and Code of Criminal Procedure have already been drafted and are being studied. (" The Constitution of the Kingdom of Cambodia " has been enacted and enforced on September 21, 1993, and the Paragraph 3 of the Article 38 of the Constitution prescribes as " The prosecution, arrest, or detention of any person shall not be done except in accordance with the law. ") Also, a consolidation of commercial registration system has been completed.

A list of main commercial laws as listed at the end of the CAMBODIA INVESTMENT GUIDE (May, 1999) (the figures indicates the year the law was enacted.):

1. Amendment to the Constitution creating the Senate (1999)
2. Financial Management Law for 1999 (1998)
3. Royal Decree on Creation of the Board of Management for Cambodian National Petroleum Authority (1998)
4. Law on Organization and Functioning of the Constitutional Council (1998)
5. Sub-Decree on Build-Operate-Transfer (1998)
6. Sub-Decree on Creation and Functioning of Dry-Port Inspection Bureau (1998)
7. Financial Management Law for 1998 (1998)
8. Order on the Management of State Property (1997)

9. Tax law of 1997 (1997)
10. Labor Law of 1997 (1997)
11. Sub-Decree on Implementation of the 1994 Investment Law (1997)
12. Foreign Exchange Law (1997)
13. Sub-Decree on Construction (1997)
14. Financial Law for 1997 (1996)
15. Nationality Law (1996)
16. Environment Protection and Natural Resource Management Law (1996)
17. General Statute on Public Enterprises (1996)
18. Financial Management Law for 1996 (1995)
19. Law on Organization of the CDC/CIB (1995)
20. Commercial Register Law (1995)
21. Law on Protection of Cultural Heritage (1995)
22. Forest Management Sub-decree (1995)
23. Sub-Decree on Public Procurement (1995)
24. Royal Decree Establishing National Authority for Protection and Management of Angkor Site (1995)
25. Chamber of Commerce Law (1995)
26. Bar Statute (Attorneys) (1995)
27. Financial Management Law for 1995 (1994)
28. Immigration Law (1994)
29. Investment Law (1994)

30. Land Management, Urbanization and Construction Law (1994)
31. Civil Aviation Law (1994)
32. Constitution of 1993 (1993)
33. Sub-Decree on the Management of Commercial Banks (1992)
34. Law on the Management of Financial Institutions (1992)
35. Law on the Organization and Functioning of the National Bank of Cambodia (1992)
36. Land Law of 1992 (1992)
37. Contract Law (1998)

4-5-1-2 Problems arising in enforcing legislation

Promulgation procedures are not making satisfactory progress partly because of insufficient budget allocated. Tax collection rate is not satisfactory partly because of the fact that dissemination of the laws to let people know them well is not sufficient. As an improvement an announcement by showing the laws on notice boards may be necessary. (But, a promulgation of law is prescribed in Article 93 of the Constitution that the law shall be published in the Official Gazette.) Public notice with radio, television, etc. may be also necessary.

THE CONSTITUTION of the Kingdom of Cambodia

[Article 93]

Any law approved by the National Assembly and signed by the King for its promulgation, shall go into effect in Phnom Penh 10 days after signing and throughout the country 20 days after its signing.

Law that are stipulated as urgent shall take effect immediately throughout the country after promulgation.

All laws promulgated by the King shall be published in the Official Gazette and published throughout the country in accordance with the above schedule.

[Article 57]

Tax collection shall be in accordance with the law. The national budget shall be determined by the law.

Also, even if the English language is common language in commerce of the world, and is serving in fact as an official language in the ASEAN, such understanding of the fact described below that the

Common Law or the Anglo-Saxon Law constitute the main law working not only within the ASEAN but also in major trading countries outside of the ASEAN is definitely wrong. Although the fact that Cambodia has decided a policy to proceed with a consolidation of commercial laws based on the Anglo-Saxon Law or the Common Law is recognized, it is also a fact that preparation of the Civil Code and Code of Civil Procedure is under progress with an assistance of Japan, which is a country based on the Civil Law or Continental Law, and this leaves an apprehension that even if the legislation is made, problems could take place in the process of the enforcement.

“ We find ourselves geographically located in the middle of a region of the world where the major unofficial language of trade and commerce is English - in fact, the official language of ASEAN is English - and where many countries have a “ common law ” or “ Anglo-Saxon ” legal tradition and current legal system. I have already mentioned that (it) is important for Cambodia to have laws which are consistent with ASEAN. It is equally important that our commercial laws be consistent with those of our major non-ASEAN trading partners, in particular the United States, the European Union member states, Japan, Korea, China, Taiwan and Hong Kong. This need has already been recognized in Directive 241 dated February 28, 1996 of the Council of Ministers, calling for the adoption of the “ common law ” or “ Anglo-Saxon ” system of law in the commercial law field. ”

(A quote from the Minister of Commerce's speech of the opening remarks in the international conference on “ Cambodian Legal and Judicial Reform in the Context of Sustainable Development ”)

4-5-1-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Cambodian accounting standards

The international accounting standards are not introduced, instead the accounting standards of France has been adopted. However, this introduction has not been made officially, and has been merely adopted conventionally even after the independence from France. Therefore, there are many differences as the Cambodian accounting standards are compared with the international accounting standards. The differences related to small and medium enterprises can be compared by the table shown below. In Cambodia, every enterprise including large-size enterprises is following Cambodian accounting practices. (As there is no stock market, there is no listing standards for stock market. Therefore, the cash flow statement, consolidated closing account, accounting for pension, accounting for lease, which are believed to be applicable to large enterprises, are not considered.)

(The World Bank is planning to establish an association of accounting firms in Cambodia and support the preparation of the accounting standards and auditing standards as the project of the Development of a system of financial accountability.)

	International Accounting Standards	Cambodian Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Cost method. Devaluation is hard to be applied as its certification is difficult. No provisions.
Accounts receivable	Estimated uncollectible bad debts are accounted for.	Estimated uncollectible bad debts can not be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life.	Cost or price of investment in kind by foreign capital Depreciation in accordance with decision by the Ministry of Finance
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on the number of years of effectiveness. Depreciation in accordance with decision by the Ministry of Finance
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market method needs to be applied.	Consolidated accounting is not used.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses only may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency is not accepted.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes can not be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Cost of goods sold and expenses are accounted for on accrual basis.

(2) Impact the difference might have on accounting practice

Cost method only can be employed in appraisal of inventory. Therefore, when inventory becomes obsolete, remaining in stock for a long period of time, and can not be sold or used, thus its value in price drops, devaluation can not be made, resulting in holding a dead stock. That can not be indicated with figures in accounting, not disclosing the fact of “ holding dead stock. ” Also, uncollectible bad debts in the account receivable can not be accounted for with estimated value. It results in not only the profit and loss for specific year not being reported correctly but also the financial status forecast for subsequent years becoming erroneous.

4-5-1-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital. Because of necessity of reporting the accounting to the home country of such foreign capital, the Cambodian accounting standards are not necessarily followed. For taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, small enterprises of Cambodia are supposed to be business of a cottage industry scale. Accounting records are not prepared at the same time their taxable income is of a minor level, thus they are usually taxed with rough estimates in tax examination, or they are not taxed.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms. And accounting firms usually give guidance in preparing accounts based on the Cambodian accounting standards.

Also, they prepare tax returns for such enterprises based on such accounts, and in this respect play a certain role. However, as small enterprises are not using accounting firms, almost no role is played by accounting firms there.

4-5-1-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Other than tax law, a guide book in the English language is available on the value added tax (10%) which was enforced since January 1, 1998, and there is a rate table guide for customs duty, thus the enforcement of the system has been improved. Because of the socialistic economic system, the organization of taxation offices is not taxpayer-oriented, and there is no concept of careful protection to foster small and medium enterprises, and therefore, there is no small and medium enterprises specific preferential taxation system. Efforts are rather directed in a consolidation of customs duty system with their target focused in enterprises with foreign capital. There is almost no taxation system as a part of industrial policy, except preferential treatment for foreign capital.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, the standard corporation income tax with ratio of 20% is reduced to 9% for investing enterprises. Investing enterprises are exempted from corporation income tax for the maximum length of 8 years after the creation of enterprises and loss may be offset with income in the taxation calculation during the period of 5 years after the year sustaining the loss.

Also, customs duty may be exempted during a construction period before starting the operation and for a period of 1 year after an initiation of operation. Exporting enterprises or enterprises with foreign capital located within the special economic zone may enjoy further exemption or reduction of

customs duty. The VAT (value added tax) which was introduced since 1998 will be exempted for 1 year or longer. There is no preferential treatment as to personal income tax.

(3) Actual state of tax examination

Tax examination is carried out with a system in which things are decided by a negotiation. That is, taxable income is not computed based on the provisions of tax law, instead an amount of tax is decided with a system in which an assumption is made based on a scale of business in many cases.

Also, as persons in charge of tax examination are not familiar with taxation work, substantial confusion took place when the VAT was introduced. Here, revenues from customs duty paid by foreign juridical persons are more important than tax revenues such as corporate income tax and personal income tax.

4-5-1-6 The present state of the policy for small and medium enterprises and the points at issue

Cambodia's policy for development of small and medium size enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	First Five Year Socioeconomic Development Plan 1996-2000	The second 5 years plan is under drafting work.
Small and medium enterprises development plan		Covered by the Industrial Plan and Actions, 1998-2003.
Organization in charge of policy	Small Scale Industry and Handicraft Section, Ministry of Industry, Mines and Energy	
(1) Small and Medium Enterprises Law	None	There is a desire to prepare it. Medium enterprises are covered by the Factory Law, 1995.
(2) Consolidation of management basis		
1) Financial measures	Law on the organization and function of the National Bank, 1996	
2) Taxation system measures	Law on Taxation, 1997	
3) Organizing measures	Phnom Penh Chamber of Commerce	Law of Chamber of Commerce, 1995
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures		
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor law, 1997	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO
(5) Other measures		

(1) The industrial structure and small and medium enterprise sector in Cambodia

In the economy of Cambodia, GDP was 3,095 million US dollars (1997, World Bank " Report on World Development, " 1998/1999) and the value-added component ratio was 50% for the agricultural sector, 15% for the industrial sector (of which 5% was for manufacturing industries) and 35% for service industries (ibid).

According to the data in the development of small and medium enterprises seminar provided by the Ministry of Industry, Mines and Energy, the number of enterprises belonging to small and medium enterprise sector (50 employees or less) was 24,663 (1998), and that of large-size enterprises (more than 50 employees) was 302. Manufacturing industry has the majority of enterprises with 24,365 companies (of which small and medium enterprises were 24,097), and the food processing industry has the largest number of 18,622 companies (of which small and medium enterprises were 18,590), then metal, wood processing, textile & sewn products manufacturing followed.

The First Five Year Socioeconomic Development Plan 1996-2000 was prepared as the middle term national plan of Cambodia with an assistance of the Asian Bank. While the Cambodian government desires to prepare the second five year plan as the national plan, as the First Plan will be completed in 2000. However, since national plan preparing capability and practical enforcement ability have not been fostered within the Cambodian government as originally planned, the Asian Bank is hesitating to prepare the five year national plan for the next term.

However, although the draft could not be obtained during this survey, the essential part of the five year national plan for next term has been prepared as a draft with a content that the development of agriculture is placed as the core of the plan in continuation from the present plan, and the emphasis of efforts is to be gradually shifted from the consolidation of infrastructure related to agriculture such as irrigation, drainage, etc. to a consolidation of infrastructure of industrial areas (road network, etc.), and greater number of foreign investments are invited and development of commerce and industry is planned.

In this Plan under drafting, a development of food processing industry using agricultural products (coconut oil, coffee, etc.) of some prefectures in Laos border area, and a development of light industry in Kandal prefecture are being planned.

As a form independent from such scheme, the Ministry of Industry, Mines and Energy has prepared the Industrial Plan and Actions 1998-2003, in which the following projects are stated:

Development of labor intensive industries;

Development of industries using natural resources;

Development of small and medium enterprises and handicraft manufacturing;

Development of agro-industries;

Transfer of technology and improvement of quality;

Development of industrial areas;

Promotion of import substitute for certain consumer material.

However, what are named as small and medium enterprises and handicraft development are mainly such handicraft as traditional furniture, sculpture, sightseeing souvenir, etc. And what are named as industrial sub-sector are merely textile, jute, etc., and the rest are limited to such agricultural processing as sugar plants, coconut oil plants, rubber, cashew nuts.

Also, as a development of industrial areas stated in said plan, outskirts of Phnom Penh, vicinity of Sihanoukville, and intervening area therebetween have been selected as target areas. There areas are where the emphasis of consolidation of infrastructure starting with road infrastructure, harbor infrastructure is placed, where industrialization with foreign investment is contemplated.

Concerning the import substitute desired by the Ministry of Industry, Mines and Energy of Cambodia, building material, paper products, chemical fertilizer, daily use products such as soap, and agricultural machines may be considered,

(2) Policy for small and medium enterprises

As virtually most of enterprises in Cambodia are small and medium enterprises with 50 or less employees, the above mentioned Industrial Plan and Actions may be considered as same as the small and medium enterprise policy. Although such Plan exists, it is difficult to develop industries actually as there are no means of realizing the same. For example, when the financing for small and medium enterprises is taken, financing institutions themselves are in a transition period from dual banking system, and are weak, while saving rate of people is low and the situation is far from such system where function of collecting fund and providing finance works properly. As practical means for obtaining the financing, people have to rely mostly on micro-finance by Agriculture Development Bank or NGO.

Also, the Chamber of Commerce and Industry has just been established, and is not yet in a state to provide practical training and consultations to business executives and employees of small and medium enterprises. Here, while no clear definition has been established as to small and medium enterprises, the Ministry of Industry, Mines and Energy classifies enterprises with 50 employees or less as small and medium enterprises, and enterprises with larger number of employees as large enterprises, merely for convenience of statistics.

4-5-1-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

In Cambodia, destruction caused by the civil war and particularly lack of human resources are severe. The only thing the country can do for the time being will be a development of industry with agricultural processed products serving as its core, and working for development of industry through import substitute policy using the invitation of foreign investment as a lever with a consolidation of infrastructure at industrial zone between Phnom Penh and Sihanoukville. The Cambodian government will not be able to feed its people by remaining as a mere agricultural country, also it needs to join the ASEAN and survive as its member, thus it believes that the development of industry is an indispensable means for that end.

Consolidation of legislation is behind the status of neighboring countries, and the works to prepare the legal system are being promoted with an awful speed. However, because of hasty work in preparing the legal system, actual works being made could be in a state like a patch-work without due consideration for securing conformity, thus requiring adjustment of what are lacking and what are duplicated. Also, a system in the enforcement aspect of the legislation could be insufficient. Concerning the development of small and medium enterprises, a system of financing to small and medium enterprises has not been consolidated, and a system in this aspect needs to be established urgently for carrying out the above mentioned Plan of the Ministry of Industry, Mines and Energy. Also, human resources for consulting and education & training are extremely in short both in the government and in the private sector. Technical assistance to the Chamber of Commerce and Industry for carrying out the technology transfer and providing guidance to small and medium enterprises is necessary.

4-5-2 Laos

4-5-2-1 Present state of legal system in planning stage

The legal system of Lao PDR has been formed with tradition and customs of Lao, and the colony ruling of France, but after 1975, socialist ideology of Soviet style has been adopted. However, since mid 1980s, the country has received the influence of the shifting of law and economy which took place in Vietnam and China, the neighboring countries. The legal system of Lao PDR has been making a shift to market economy while containing all of the historical processes mentioned above, and is being developed based on the recent national economic needs of the Lao PDR itself to seek cooperation with ASEAN countries.

The Lao Constitution was adopted by the Diet on August 14, 1991 and was promulgated on August 15, 1991. The Part 2 of this Constitution prescribes as follows with a title of THE SOCIO-ECONOMIC SYSTEM:

Article 13.

The economic system of the Lao People's Democratic Republic is a multi-sectoral economy having as objective the expansion of production and increase of goods circulation, and the

transform the subsistence economy into a commodities economy in order to develop the national economic base and improve the material and spiritual living conditions of the multi-ethnic people.

Article 14.

The state protects and promotes all forms of state, collective and individual ownership, as well as the private ownership of both domestic investors and foreigners who invest in the Lao People's Democratic Republic.

The State encourages all economic sectors to compete and cooperate with one another in expanding their production and business activities. All economic sectors are equal before the law.

Then in the following Article 15, a protection of property right is prescribed.

Article 15.

The State protects the rights of ownership (right to possess, right to use, right to transfer) and organizations' and individuals' right to inherit property. As for the land which is owned by the national community, the State ensures the right to use, transfer, and inherit it in accordance with the law.

However, Article 16 expressly stipulates the regulation (adjustment) of market by the State, and concerning the political system, Article 3 prescribes the one party system with the Lao People's Revolutionary Party.

Article 16.

Economic management is carried out according to the mechanism of the market with the adjustment by the State, and is implemented by the principle at central level in combination with a reasonable delegation of the responsibility to local authorities.

Article 3.

The right of the multi-ethnic people to be masters of the country is exercised and ensured through the functioning of the political system, with the Lao People's Revolutionary Party as its leading nucleus.

The first legislation made in the 1980s in the Lao PDR was the Penal Code. From 1990 on, a consolidation of civil codes has been promoted with a guidance of French experts.

Since the Lao PDR has a tradition of French laws, a consolidation of legal system has been made based on Civil Law, not Common Law as a principle. However, the difference between Civil Law and

Common Law has lessened in these years, and the legislation is being made with laws of various countries taken as reference, without sticking to a particular law system.

Concerning civil code system, a form of consolidating all civil laws in the Civil Code is not employed, instead a law for each field is prepared as Inheritance Law, Family Law, Contract Law, Unlawful Act Law. Besides these there are Enterprise Law and Bankruptcy Law.

In 1986, the Vientiane Law School was established for bringing up human resources in legal circles. The School was under administration of the Ministry of Justice in the initial stage, but in 1995 it was made a department of the national university which is under administration of the Ministry of Education by the policy of the government. At the same time the School was renamed as the Faculty of Politics and Law. The Faculty is divided into three departments of law, administration, and politics & economy. Number of years for completing the course to get the bachelor of law is 5 years, of which 1 year is a preparatory course, then legal education is made in 4 years.

A law which passed the Diet is promulgated by the name of President within 30 days. The promulgation is made by the Official Gazette.

Since 1988, a total of 34 laws have been enacted besides the Constitution as indicated below:

Constitutional Law No. 1 (1991)

Foreign Investment Law (1988) (amended in 1994)

Economic Crimes Law (1988)

Criminal Code (1990)

Criminal Procedure Code (1990)

State Bank Law (1990)

Extra-Contractual Obligations (Tort) Law (1990)

Civil Procedure Law (1990)

Contract Law (1990)

Inheritance Law (1990)

Family Law (1990)

Business Law (dealing with corporate and related entities) (1994)

Bankruptcy Law (1994)

Secured Transactions (mortgage and suretyship) Law (1994)

Domestic Investment Law

Banking Law

It was planned in the 5 Year Plan (1996 - 2000) to submit 34 bills for laws as shown below (Ones with year represents a law which has been enacted):

1. Land Law
2. Forestry Law (1996)
3. Water Law (1996)
4. Check Law
5. Electricity Law
6. Mining Law
7. Commercial Law
8. Economy/Special Zones Law
9. Government Assets Law
10. Wildlife Law
11. Industry Law
12. Handicrafts Law
13. Education Law
14. Culture Law
15. Communications Law

16. Surface Transportation Law
17. Posts Law
18. Urban Planning Law
19. Civil Servants Law
20. Local [Government] Authorities Law
21. Tourism Law
22. Office of Economic Dispute Resolution Law
23. Judicial Police Law
24. Lawyer Law
25. Prison Law
26. Execution of Court Decisions Law
27. Intellectual Property Law
28. Environmental Law
29. Securities Law
30. Public Health Law
31. Food and Drugs Law
32. Addictive Drugs [Narcotics] Law
33. Civil Aviation Law
34. Procurement and Construction Law

4-5-2-2 Problems arising in enforcing legislation

Recently it has been discussed that a commercial transaction law should be prepared besides (Civil) Contract Law. In addition, local administration law and an aviation law have not been prepared, and they should be prepared as soon as possible.

Also, along with the building of the so-called East-West Corridor Road, a tripartite road transportation agreement has been concluded with Thailand and Vietnam with a guidance of the ADB, but as a road transportation law (drivers license system, etc.), and laws and regulations on vehicle inspection have not been prepared in Laos, the country has to accept a very disadvantageous position in enforcement of this agreement. At present, vehicles of Laos are not admitted to transport goods to Bangkok Port, and thus increased cost of transportation is weakening the international price competitiveness of export products of Laos. It is urgently required to consolidate a road transportation law, vehicle inspection law of international level, so that vehicles of Laos can deliver goods to ports in Thailand and Vietnam.

4-5-2-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Lao accounting standards

Studies for introducing the international accounting standards have not been completed. Therefore, there are a number of differences, and the difference involving small and medium enterprises may be compared with the table shown below. Accounting practices in every enterprise including a national enterprise of Laos are based on the Lao accounting standards. Here, a level of requirements in accounting procedures is different among small enterprises, medium enterprises and large enterprises. A small enterprise is permitted to not making a double entry bookkeeping if a profit and loss statement can be prepared. However, account code numbers are designated. (As no stock market has been formed, there is no listing standards for stock market.) (The Asian Development Bank is providing supports for building the accounting system of government organizations including national enterprises as a project of the Enhancing government accounting regulations and procedures.)

	International Accounting Standards	Lao Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Cost method. No provisions.
Accounts receivable	Estimated uncollectible bad debts are accounted for.	Estimated uncollectible bad debts can not be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life.	Cost or price of investment in kind by foreign capital Depreciation in accordance with decision by the Ministries concerned
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on the number of years of effectiveness. Depreciation in accordance with decision by the Ministries concerned
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market method needs to be applied.	Consolidated accounting is not used.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Interest expenses only may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency is not accepted.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes can not be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Only approved expenses may be accounted for.

(2) Impact the difference might have on accounting practice

Principally, the Lao accounting standards are too generic to be used as the guideline for accounting practices. Cost method only may be used for valuation of inventory. Therefore, when inventory becomes obsolete, remaining in stock for a long period of time, and can not be sold or used, thus its value in price drops, devaluation can not be made, resulting in holding a dead stock. That can not be indicated with figures in accounting, not disclosing the fact of “ holding dead stock. ” Also, uncollectible bad debts in the account receivable can not be accounted for with estimated value. It results in not only the profit and loss for specific year not being reported correctly but also the financial status forecast for subsequent years becoming erroneous. An uncollectible bad debts in account receivable can not be carried as allowance, which results in the same situation. (The country is in business environment where little sales are made on credit.)

4-5-2-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are believed to be joint ventures with foreign capital. Because of necessity of reporting the accounting to the home country of such foreign capital, the Lao accounting standards are not necessarily followed. For taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, small enterprises of Laos are supposed to be business of a cottage industry scale. Accounting records are not prepared and at the same time their taxable income is of a minor level, thus they are usually taxed with rough estimates made in tax examination.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms. And accounting firms give guidance for preparing accurate accounts. Also, they prepare tax returns for such enterprises based on such accounts, and because the procedures involving customs duty are complicated, the accounting firms serve as go-between in negotiation with taxation offices. In such respect the accounting firms play a certain role. However, as small enterprises are not using accounting firms, almost no role is played by accounting firms there.

4-5-2-5 The present state of the taxation system and the points at issue

(1) Tax collection system

Besides the tax law, a customs duty law has been established separately. Other departments than the customs duty department of the tax offices are weak as organizations. There is no small and medium enterprises specific preferential taxation system. As the country is in a stage that industries are to be fostered from now, only little revenue can be expected from collection of corporate income tax. On the other hand, collection of sales tax is making a satisfactory achievement together with the customs duty, thus studies are being made to revise the sales tax to value added tax for achieving better tax collection.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, the standard corporation income tax with ratio of 35% is reduced to 20% for joint venture enterprises with foreign capital. And as a preferential treatment for foreign engineers who earn high salary, only a flat rate of 10 % is applied as the personal income tax.

(3) Actual state of tax examination

Tax examination is carried out with a system in which things are decided by a negotiation. That is, taxable income is not computed based on the provisions of tax law, instead an amount of tax is decided with a system in which an assumption is made based on a scale of business in many cases.

Also, as persons in charge of tax examination are not familiar with taxation work, revenue from tax does not increase. Here, revenues from sales tax and customs duty paid by foreign juridical persons

are more important than tax revenues from corporate income tax (representing 10% of the total tax revenues) and personal income tax. (Also, the auditing standards have been established as a decree, which may serve as the guideline for tax examination.)

4-5-2-6 The present state of the policy for small and medium enterprises and the points at issue

Lao's policy for development of small and medium size enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	Vision of 20 Years National Socio-Economic Development Plan 1996-2000	Vision of 10 Years is in a drafting stage.
Small and medium enterprises development plan	None.	Studies are being made on the policy for small and medium enterprises.
Organization in charge of policy	Department of Industry, Ministry of Industry and Handicraft	
(1) Small and Medium Enterprises Law	None.	Being studied by the Department of Industry, Ministry of Industry and Handicraft.
(2) Consolidation of management basis		
1) Financial measures	None.	The financing scheme of the Agricultural Promotion Bank may be used for development of farm industry.
2) Taxation system measures		
3) Organizing measures	Lao National Chamber of Commerce	
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures	The Law of Enterprise Bankruptcy, 1994	
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor Law, 1994	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO
(5) Other measures		

(1) Industrial structure and small and medium enterprise sector of Laos

In the Lao economy, the GDP was 1,753 million US dollars (1997, World Bank, " Report on World Development, " 1998/99), and the value added component ratio was 52% for the agricultural sector, 21% for the industrial sector (of which 15% was for manufacturing industries), and 28% was for the service industries.

According to the Ministry of Industry and Handicraft of Laos, the number of enterprises in the statistics of 1998 was 16,000, which were classified as follows (This was statistical classification, and was not the classification formerly defined in the policy for small and medium enterprises):

Large enterprise: Number of employees 100 or more. The number of enterprises was less than 1% of the total number of enterprises.

Medium enterprise: Number of employees 10 - 99. Less than 5%.

Small enterprise: Number of employees 9 or less. 95%

The Ministry of Industry and Handicraft of Laos employs the classification of business by the ISIC, and main sub-sectors in small and medium enterprises are food processing, handicraft, ceramic ware, etc. Also, the Vision of 20 Years was being drafted as a long term national vision, in which while the breakaway from LLDC is the target, it is strongly declared that the economic development will be promoted with a balance maintained between the social development and economic development, and the protection of domestic industries is secured. And as the characterizing features of this policy, it is definitely stated that even if the economic development is promoted, such social problems shall not be allowed to take place as a formation of slums with concentration of population in large cities and the excessive difference in economy between city sector and agricultural sector.

Further, concerning the protection of domestic industries, while the foreign investment is recognized as necessary for development of economy, such policy is stressed that total economy is monitored and necessary adjustments will be made so that the balance with domestic industries will not be broken.

Before this Vision, the National Socio-Economic Development Plan 1996-2000 was prepared with a support by the United Nations organization, and this Plan is functioning now as the middle term national plan. The following 8 items which have been approved by the Diet are described in this Plan as important policy themes:

Increased production of foods;

Stabilizing the agriculture;

Increased production of merchandise;

Development and consolidation of infrastructure;

Improvement of management system of society and economy and building good relationship with the world economy;

Regional development;

Development of human resources;

Development of service sector.

(2) Policy for small and medium enterprises

While the development of industry in Laos has been carried out with the Ministry of Industry and Handicraft serving as its core, it faces various problems derived from geographic and historical causes, and the situation is rather difficult.

First of all, the country had adopted the system of planned economy, and now is shifting to market-oriented principle, but the shifting is still in progress and not completed yet. Also, the Lao government and the Party are taking a position of going against the shifting to the market-oriented principle, thus the shifting is being made slowly. However, the country desires to join the ASEAN and the WTO, and a consolidation of legal system for this joining is being made with the cooperation from international assistance organizations such as the UNDP, etc.

Secondly as to geographical element, this is a landlocked country having no sea ports for export and import, which constitutes disadvantageous condition for international trade. Also, the country adjoins Thailand with a long boundary line, and further as the Mekon River constitutes the boundary, a control of boundary is difficult, and because of the difference in the state of preparation of legal systems such as road laws, etc. and the weakness in the border control capability, the country receives substantial influence of the economy and system of Thailand in various aspects including the distribution of merchandise and circulation of money, and the Lao government is placed in a position that it is difficult to control the economy including the financial policy and industrial development policy.

The actual state of the small and medium enterprises is such that a private sector has just started to exist, and there are only a few noteworthy enterprises, which were state operated enterprises and have been shifted to private sector, while most of the enterprises are of a cottage industry scale. Main industrial sectors are food processing, handicraft, ceramics, woodworking, furniture, etc. and there are virtually no modern industry existing in the country.

While the Ministry of Industry and Handicraft wishes to build the business for import substitute in the construction material such as building material, iron bars, steel, pipes and daily use sundry goods, which are flowing into the country from Thailand and China mainly with smuggling, so that

the domestic industries are protected and fostered, then to build industries for plastics products and somewhat heavy industries. However, it will be difficult to realize such desire.

Here, the government is aware of the importance of bringing up the small and medium enterprises, and is studying policies for that end.

1) Financing for small and medium enterprises

At present there are 8 state operated banks under the central bank in Laos. A bank having a possibility of working as policy financing institution out of such 8 banks is only the Agricultural Promotion Bank. But even this bank can be used for a limited object for development of agriculture, thus for development of food processing industries and of farm industries. In this sense, the country has no policy financing institution which can be used for development of industry.

There is no credit protection system, and only other banks are 2 banks which are joint ventures with Vietnam and 7 branches of Thai commercial banks, thus the financial circle itself has a very weak structure.

2) Technical support for small and medium enterprises

Concerning the technical support for small and medium enterprises, for example, even technical assistance or training in day to day work level are not provided for example by Lao Chamber of Commerce and Industry, etc.

4-5-2-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

A rapid industrialization will be difficult for Lao PDR because of the geopolitical restriction the country is placed under. The Lao government itself is thinking that the economic self-sufficiency will be the first target to achieve through the development of agriculture, then gradually working on the industrialization.

However, the government has some expectation in the development of Mekon River Basin, completion of the East-West International Corridor, and the consolidation of infrastructure with road serving as its core, so that these could serve as a lever for fostering sight-seeing industry and its supporting industries, such as food processing, and souvenir industries starting with handicraft products, and the industrialization could be initiated from this.

Also, there are problems on legal system involving various international relations such as smuggling and an inequality issue on export transportation within Thailand, and the government has troubles in solving such problems and consolidating the legal system involved. International negotiations will be require for these with Thai government, etc. (For example, legal system on vehicle maintenance, and road transportation at a level acceptable to Thai side.)

4-5-3 Vietnam

4-5-3-1 Already consolidated legal system

A consolidation of a number of laws has been made since Doi moi, and cooperations have been provided in the legal system support by the JICA. Also, business environment is being prepared and reform of legal system is made one after another in these days.

(1) Law on enterprises

The new law on Enterprises was adopted in the Diet of June 12, 1999, and was enforced on January 1, 2000. The law comprises a total of 10 Chapters and 124 Articles. For enforcing this law, “ Decree of the Government on business registration, ” “ Decree of the Government guiding implementation of some Articles of the Law on Enterprises, ” “ Decision of the Prime Minister abolishing certain types of permits which are contrary to the provisions of the Law on Enterprises ” were issued on February 3, 2000.

This new Law on Enterprises is a comprehensive enterprise law which is applicable not only to general enterprises but also to state owned enterprises (SOE) which have been converted to shareholders companies. The regulations on various forms of enterprises which had been prescribed in various individual law such as state operated enterprise law, foreign capital enterprise law, company law, private enterprise law, etc. was consolidated into a single law in this new Law on Enterprises.

As the history of enterprise law of Vietnam is reviewed, the foreign investment law was enacted in 1987 (revised in 1996), and the company law for juridical persons in private sector was enacted in 1990 (revised in 1994 as the bankruptcy law was enacted), then the state operated enterprise law was enacted in 1995. As such individual legislation indicates, the company law of 1990 was not considered as a comprehensive company law taking into view a reform of state operated enterprises and an integration with the foreign capital enterprise law.

But, as the state operated enterprise law was enacted in 1995 and the full scale reform of the state owned enterprises is making steady progress, the conversion of such enterprises to shareholders companies becomes an inevitable course of movement, thus the necessity of a law for shareholders company, which can be applied to shareholders company, being converted from a state owned enterprise (SOE), has been heightened. Within such course of movement, the work to revise the company law was started formerly in 1990, and a first revision draft was prepared in January, 1996. However, the relations with state owned enterprises and foreign capital enterprises were not too certain until the 10th draft was made in July, 1998. But, in the 11th draft made in August, 1998, the name was changed from Company Law to Enterprise Law, and the law was to include private companies.

Further, it was clearly stipulated that SOE may be re-organized to a shareholders company or a limited liability corporation.

As the English translation of thus revised Law on Enterprises is read, the total 10 chapters of this law is arranged as follows:

Chapter 1 General Provisions

Chapter 2 Establishment, and Registration of Business

Chapter 3 Limited Liability Company

Section 1 Limited Liability Company with two or more Members

Section 2 Single-Member Company with Limited Liability

Chapter 4 Shareholders Company

Chapter 5 Partnership

Chapter 6 Private Enterprise

Chapter 7 Re-organization, Dissolution and Bankruptcy of an Enterprise

Chapter 8 State Management over Enterprises

Chapter 9 Awards, and Violation Handling

Chapter 10 Implementation Provisions

The Re-organization of company in the Chapter 7 contains the provisions on division, transfer of business, merger, change in the form of company (conversion from limited liability company to shareholders company, etc.), etc. The bankruptcy appears only in the title of the Chapter, while provisions on bankruptcy are prescribed in the Bankruptcy Law.

Here, while an approval of business had been necessary for almost every kind of business, an establishment of a company could be made virtually under a nominal permit system, and while there had been various restrictions on operations of business, “ Decree No. 02/2000/ND-CP dated 3 February 2000 of the Government on business registration ” simplified the procedures of Business Registration for enterprises which have been created and operated under the Law on Enterprises, and further, “ Decision No. 19/2000/QD-TTg dated 3 February 2000 of the Prime Minister abolishing certain types of permits which are contrary to the provisions of the Law on Enterprises ” has abolished the system of Business Licenses for 84 types of business, Certificates of Business, system of permit for Business, and the system of other permits.

(2) Civil code

The Civil Code of Vietnam was adopted by the Diet on October 28, 1995 and was enforced since July 1, 1996. This Code comprises a total of 7 Parts and 838 Articles. By this Code, the Ordinance on

Civil Contracts dated 29 April 1991; Ordinance on Residential Housing dated 26 March 1991; Ordinance on Inheritance dated 30 August 1990; Ordinance on Protection of Industrial Property Rights dated 28 January 1989; Ordinance on Copyright Protection dated 2 December 1994; Ordinance on Transfer of Foreign Technology into Vietnam dated 5 December 1988 were abolished on July 1, 1996. As will be understood from this list of abolished ordinances, provisions on intellectual property right and transfer of technology are also included. Also, provisions concerning private international law are included.

The arrangement of the total of 7 parts is as follows:

Part 1 General Provisions

Part 2 Property and Ownership Rights

Part 3 Civil Obligations and Civil Contracts

Part 4 Inheritance

Part 5 Provisions of Land Use Rights

Part 6 Intellectual Property Rights and Technology Transfer

Part 7 Civil Relations involving Foreign Elements

(3) Mortgage loan system

The Decree No, 178 on mortgage loan by financing institutions was promulgated as of December 29, 1999. This Decree No. 178 is applied to mortgage or security for loan from financing institution to customers under the Law on Credit Institutions.

According to this Decree No. 178, the liability under loan may be secured 1) by mortgage or (and) pledge on the property of the borrowing party; 2) guarantee by using property of a third party; 3) by mortgage or (and) pledge on the property formed from revenue by the loan. Also, this Decree prescribes the condition, evaluation of objects of the mortgage or pledge, when unsecured loan can be made by state operated financing institution.

(4) Foreign investment law

On March 29, 2000, the Ministry of Planning and Investment revealed the final draft for revised Foreign Investment Law which is intended for an enactment in the Diet which is to begin its session in May. The gist of this draft is as follows:

1) The unanimous agreement principle in the board of directors meeting, which has been hitherto stated as an indispensable requirement for decision of important agenda for joint ventures, is relaxed.

2) An establishment of an enterprise in a form of shareholders company is admitted.

3) A transition from joint venture to full amount investment is facilitated.

The revision of this time was made after an interval of 3 years and half since November, 1996. The revision was to respond to the situation where an introduction of foreign capital has been stagnating for a prolonged period of time, and it was intended to improve investment environment.

Under the present system, what requires the consent of all directors are appointment and dismissal of president and vice president, change in the articles of incorporation, approval of closing account, resolution for procurement of fund, etc. In the revision draft, these are allowed with a consent of 51 - 75% with an exception of the change in the articles of incorporation, which strengthens the management right of foreign capital side which ordinarily possesses greater shares of stock.

Joint venture as shareholders company and establishment of fully owned subsidiary were permitted in addition to a form of limited liability company, which had been heretofore admitted, with an object of expanding the means for procuring fund, with a creation of stock market taken into consideration.

As conflict of opinion between partners in existing joint ventures are reported rather frequently, it is said that the condition for allowing a shift to full amount investment will be shown. It is also planned to include such provisions that the local side partner assumes the responsibility for evacuation of residents from a land which is to be used for building of factory, and financing institution with foreign capital will be added to the party to whom the mortgage of using a land is provided.

(5) Labor law

The Labor Law was enacted in 1995. The labor administration till that time had been done by a number of administrative orders and regulations, and a revision of the Labor Law is discussed recently. It is planned a draft for revision is to be submitted to the Diet in 2001 after consultation with labor unions. While this Labor Law is applied equally without making difference among government workers, SOE, private sector, an application of social insurance system and a method of settling labor dispute, etc. are different between enterprises with 10 or more employees and enterprises with less employees. The legislation of the Labor Law in 1995 was based on the recommendation of the ILO, and the number of treaties ratified by Vietnam is 14.

The 1995 Labor Law contains the provisions on settlement of labor dispute. Labor dispute is classified into two kinds as an individual level and a group of persons related to union. A dispute in an individual level which can not be settled by negotiation is brought to an arbitration by a dispute committee, and when it can not be settled there, an adjudication by a court will be made. For dispute with a group of persons, when a dispute is not settled with negotiation it is brought to the Provisional

Council seeking its Arbitration. Arbitrators shall comprise the three parties: labor union side, employer side, and administration side as Ministry of Labor or local administrative organization.

While an application of the Labor Law is not different between the inside and outside of the Export Processing Zone (EPZ), only difference is that enterprises within the EPZ has an obligation to observe the administrative rules of the EPZ committee. The EPZ committee is to receive an inspection and supervision by local administrative organization, and receive supervision directly by the departments in charge of labor at outside of the EPZ.

As a principle, there is no difference between domestic capital and foreign capital as to an application of the labor laws, and only difference lies in two points of the minimum wage and employment of persons.

A Decree was issued in 1990 on social insurance system. Concerning the social insurance system, there are specific systems for accidents and disasters, pregnancy and child birth, pension, sickness, etc. There is a difference between an enterprise with 10 or more employees and an enterprise with less employees in the point that whether joining the insurance system is mandatory requirement or optional.

Concerning a conversion of SOE to private management, a Decree was issued in 1999 on measures to cover an increase in number of the unemployment derived from shift to private management.

4-5-3-2 Problems arising in enforcing legislation

The following points have been pointed out:

Each law contains unclear portions, and there are contradictions between laws.

As detailed enforcement rules are not issued, the enforcement lacks uniformity.

As the number of allowance days before the enforcement is not sufficient, a confusion is taking place in enforcement.

Information related to law is not satisfactorily spread among people.

Concerning a creation of stock exchange, preparations were made since 1994, and the state stock committee (SSC), an organization in charge was created in the Summer of 1997, but the plan was not realized during the year of 1999. The main reason therefor is that as reform of state operated enterprises, which were planning to be listed, is getting delayed, there was very small number of enterprises which satisfy the listing standards. Also, because of the resistance by bureaucracy who intend to defend own vested right, the conversion of state owned enterprises to private management is delayed, and as of 1999, the number of enterprises shifted to shareholders companies was 160

which was substantially smaller than the 400 which was declared as the annual target. Conservative people are said to become very careful in operations with market-oriented point of view, as they watch the stock market of other countries get in confusion under Asian crisis.

As the problem in enforcement of labor law, both employers and labors do not understand the labor law sufficiently, particularly in small and medium enterprises, as not much time has elapsed since its enforcement.

4-5-3-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Vietnamese accounting standards

An introduction of the international accounting standards was started, but there are still many differences. The differences related to small and medium enterprises can be compared by the table shown below. In Vietnam, every enterprise including large enterprise is following Vietnamese accounting standards. (As there is no stock market, there is no listing standards for stock market. Therefore, the cash flow statement, consolidated closing account, accounting for pension, accounting for lease, which are believed to be applicable to large enterprises, are not considered.)

However, as the state operated enterprises are managed and operated with the guidance from the Communist Party, they are not necessarily carrying out the enterprise accounting based on the market economy principle, and there is a dissociation between the international accounting standards and many Vietnamese accounting standards. (Canadian International Development Agency and the UNDP are jointly supporting a preparation of the legal system including an audit of account and taxation system related to the petroleum legislation, in the project of the Vietnam - Canada oceans and coastal cooperation programme - petroleum legislation.)

	International Accounting Standards	Vietnamese Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Cost method. Devaluation is hard to be applied as its certification is difficult. No provisions.
Accounts receivable	Estimated uncollectible bad debts are accounted for.	Estimated uncollectible bad debts can not be accounted for.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life.	Cost or price of investment in kind by foreign capital Depreciation in accordance with decision by the Ministry of Finance
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on the number of years of effectiveness. Depreciation in accordance with decision by the Ministry of Finance
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market method needs to be applied.	Consolidated accounting is not used.
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Only the compensated absence, expenses for repair of contracted fixed asset, allowance for guarantee, and interest expenses may be accounted for on accrual basis.
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Allowance for contingency is not accepted.
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes can not be accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Gain and loss from fluctuation of foreign exchange, fund for bonus and welfare of employees, subsidy from government, and corporate income tax are excluded from the profit and loss calculation. Fund for development of business, fund for capital expenditure, and fund for management expenditure are carried under a separate accounting as reserve.

(2) Impact the difference might have on accounting practice

Cost method only can be employed in appraisal of inventory. Therefore, when inventory becomes obsolete, remaining in stock for a long period of time, and can not be sold or used, thus its value in price drops, devaluation can not be made, resulting in holding a dead stock. That can not be indicated with figures in accounting, not disclosing the fact of “ holding dead stock. ”

It results in not only the profit and loss for specific year not being reported correctly but also the financial status forecast for subsequent years becoming unavoidably erroneous. Gains and loss from fluctuation of foreign exchange and reserve for retirement allowance can not be accounted for, thus there are substantial dissociation from the international accounting standards.

4-5-3-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital. Because of necessity of reporting the accounting to the home country of such foreign capital, the Vietnamese accounting standards are not necessarily followed. For taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms. On the other hand, small enterprises of Vietnam are supposed to be business of a cottage industry scale. Accounting records are not prepared at the same time their taxable income is of a minor level, thus they are usually taxed with rough estimates made in tax examination.

(2) Role of accounting firms

Many medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms. And accounting firms usually give guidance in preparing accounts based on the Vietnamese accounting standards. Also, they prepare tax returns for such enterprises based on such accounts, and in this respect play a certain role. However, as small enterprises are not using accounting firms, almost no role is played by accounting firms there.

4-5-3-5 The present state of the taxation system and the points at issue

(1) Tax collection system

There are decrees and circulars besides tax law, and the operations of the taxation system have been improved. The organization of taxation offices is not taxpayer-oriented because of the socialist economic system, and there is no concept of careful protection to foster small and medium enterprises. Thus, there is no small and medium enterprise specific preferential taxation system. And as the wealth tax is still remaining, there is little or no preferential considerations in industrial policy except preferential treatment of foreign capital.

(2) Preferential taxation system for investing enterprises including small and medium enterprises
As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, the standard corporation income tax with ratio of 35% is reduced to 25% for joint venture enterprises with foreign capital. However, for providing preferential treatment for investment from

overseas, the taxation rate for income tax is reduced to 10%, 15% or 20% for a period of 10 years to 15 years depending on type of business, after an initiation of operations. Income tax for the enterprises in the special tax reduction zone will be reduced, and no income tax is levied on such enterprises for 4 years after an initiation of business, then the income tax for the subsequent 4 years will be halved, then the tax rate thereafter will be 10%. The VAT (value added tax) introduced from January 1, 1999 is reduced by 50% for manufacturing industries. Concerning personal income tax, an additional 30% of wealth tax is levied on persons with high salaries (persons with income after tax of 8 million Dons). Also, customs duty will not be levied on trade with Laos and Cambodia.

(3) Actual state of tax examination

Tax examination is carried out with a system in which things are decided by a negotiation. That is, taxable income is not computed based on the provisions of tax law, instead an amount of tax is decided with a system in which an assumption is made based on a scale of business in many cases. Also, as persons in charge of tax examination are not familiar with taxation work, substantial confusion took place when the VAT was introduced.

Here, revenues from customs duty paid by foreign juridical persons are more important than tax revenues from corporate income tax and personal income tax.

4-5-3-6 The present state of the policy for small and medium enterprises and the points at issue

Vietnam's policy for development of small and medium size enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	The 5 years plan for socio-economic development of Vietnam, 1996-2000	The 5 years plan for the next period is under drafting work.
Small and medium enterprises development plan	No formal plan.	"Small and medium enterprise development plan in Vietnam" has been provided by JICA, and a separate proposal has been submitted to the Vietnamese government by the UNIDO.
Organization in charge of policy	Ministry of Planning and Investment Ministry of Industry	The MPI is studying the policy. The MOI is refraining from disclosing their attitude.
(1) Small and Medium Enterprise Law	Studies are being made in the form of the Decision of the Prime Minister.	Presently under deliberation
(2) Consolidation of management basis		
1) Financial measures	Law on the organization and function of the National Bank, 1996	
2) Taxation system measures	Law on Taxation, 1997	
3) Organizing measures	Vietnam Chamber of Commerce	
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures	The Enterprise Bankruptcy Law, 1993	
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures	Labor Law, 1994	
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO
(5) Other measures		

(1) Industrial structure and small and medium enterprise sector of Vietnam

In the economy of Vietnam, the GDP was 24, 893 million US Dollars (1997, World Bank, “ Report on World Development, ” 1998/99), and the value added component ratio was 27% for agricultural sector, 31% for industrial sector, and 42% for service sector (ibid).

The government has made a tentative definition on small and medium enterprises in 1998 as “ enterprises with a capital of less than 5 billion VND or less than 200 employees. ” According to the “ Report on investigation for small and medium enterprise development plan in Vietnam (Digest) submitted by the JICA to the Vietnamese government in December, 1999, the number of enterprises by scale of capital and number of enterprises by number of employees, as well as the number of private sector manufacturing enterprises by main industries and by number of employees are as shown below. Therefore, the number of small and medium enterprises in Vietnam will be about 1.9 million (1995). Also, even if the difference between an estimation in 1995 and that in 1998 is taken into consideration, it will be known that the number of private sector enterprises engaging in manufacturing industry is very small. (Every Statistical figure indicated is quoted at second hand from p3 - p4 of the Report on investigation for small and medium enterprise development plan in Vietnam (Digest).)

Number of enterprises by scale of capital (1995)

Form of enterprise	Statistics	Less than 5 billion D	5 - 10 billion D	10 - 20 billion D	20 - 30 billion D	30 billion D or higher
State operated enterprise	5,873	4,367	691	421	141	253
JV with foreign capital	692	353	104	96	42	97
Private enterprise	10,916	10,882	26	4	1	3
Shareholders company	118	90	12	9	4	3
Limited liability company	4,242	4,123	42	26	10	11
Partnership	1,867	1,827	22	12	3	3
Independent self-management	1,879,402	1,879,402	-	-	-	-

Scale of capital is by Vietnamese Don.

(Source) Industrial Department, MPI, 1999

Number of enterprises by number of employees (1995)

Form of enterprise	Statistics	Less than 100 persons	100 - 200 persons	200 - 500 persons	500 persons or more
State operated enterprise	5,873	4,086	190	263	1,333
JV with foreign capital	692	406	15	33	238
Private enterprise	10,916	8,120	165	351	2,780
Shareholders company	118	92	3	3	20
Limited liability company	4,242	3,276	105	142	719
Partnership	1,867	1,096	38	97	636
Independent self-management	1,879,402	1,879,402	-	-	-

(Source) Industrial Department, MPI, 1999

(2) Small and medium enterprises development policy

As the national plan of Vietnam, there is “ The 1996-2000 Five-year Plan for Socio-Economic Development, ” and the Five-Year Plan for the next period exists in draft. The content of the Five-year Plan for next period was not known at the time of this survey, but the 1996-2000 Five-year Plan does not mention the small and medium enterprise development policy, and had no concept of taking the small and medium enterprises as a sector for which development is thought of. (The main content of the 1996-2000 Five-Year Plan for Socio-Economic Development was 1) To increase the investment by 30% by the year 2000 and to achieve 9-10% average growth rate of GDP, and to double the GDP per capita of the level at 1990; 2) To develop the primary industrial sector aiming at an average annual growth rate of 4.5-5% with emphasis placed in the relation with agricultural, forestry and marine products processing industry; 3) To give priority to the development of industries for food processing, general consumer goods, and export-oriented industries in the development of industries, and at the same time to endeavor to foster vital industries such as petroleum and gas, cement, machine industry, electronics, iron and steel, chemical fertilizer, chemical industry, etc., and thus develop the secondary industrial sector with an annual growth rate of 12-13%; and 4) to develop the tertiary industrial sector with an annual growth rate of 12 -13% with emphasis placed in the fortification of transportation, information-communication industry, foreign trade, sight-seeing, finance, professional services. etc.)

After that a policy for development of small and medium enterprises was studied with the MPI and the Ministry of Industry working as its core from a stand point of regional development and employment issue and measures against poverty, and several assistance organizations from advanced countries starting with the JICA and international organizations have made proposals on small and medium enterprise development policy.

There are three different proposals on such small and medium enterprise development policy among them. One of them is the small and medium enterprise investigation in Vietnam made by the JICA, in which an enactment of the basic law for small and medium enterprises, a creation of development organization, consolidation of financing system, and bringing up of diagnosis and guidance specialists based on the diagnosis and guidance in Japan were proposed.

A financial reform was proposed as Miyazawa Scheme Project in parallel with the above mentioned proposal, and a proposal was made there for a financing system for small and medium enterprises. The above mentioned small and medium enterprise development plan of the JICA has its part relating to consolidation of financial system modified in a form of matching with such Miyazawa Scheme Project, thus there is no particular contradiction between these two proposed plans.

However, the UNIDO has made another proposal to the Vietnamese government on the small and medium enterprise development policy. The difference from the Japanese proposal is in the form of organization carrying out the small and medium enterprise development policy, where the Japanese proposal is characterized by a creation of the small and medium enterprises agency and a concentration of policy making and enforcement function in the enforcement aspect, while the UNIDO proposal is to provide the small and medium enterprises agency within the organization of existing government offices and opposing a creation of a new administrative organization, and a separation of the policy function and enforcement function, and carrying out the enforcement function by private sector and existing organizations. The UNIDO is maintaining on the framework of this small and medium enterprise policy that a system of pooling aid fund from donors and the UNIDO managing such fund.

Concerning the enactment of Small and Medium Enterprises law, which has been proposed by the JICA and has been agreed to, the Vietnam side desires it enacted in the form of the Prime Minister's Decision instead of a law, and preparations were in progress at the time of this survey, but was delayed from the original plan.

1) Existing development plan for small and medium enterprises

Vietnam is still in a state that state operated enterprises and foreign investment enterprises (including joint ventures) are in the position to lead the industry, and the transfer of state operated enterprises to private sector has been made only in an incomplete form, also private sector enterprises themselves do not exist but in a minor way except foreign investment companies (including joint ventures). Enterprises in private sector and at the same time small and medium enterprises are mostly of a cottage industry level, and furthermore the number of manufacturing enterprises is very small at the present state. Therefore, the small and medium enterprise development policy for the Vietnamese government is deeply related with the measures against the poverty and measures against unemployment.

However, some industrial development policies are being carried out under the Ministry of Industry and the Ministry of Science and Technology, and such policies are believed to be reflected on the future small and medium enterprise development policy in some form.

The Ministry of Industry has conducted vocational training for enhancement of the quality of workers in the state operated enterprises (manufacturing industry) which are under its administration. Also the Ministry is guiding the enterprises which are under its administrative supervision and are related to manufacturing industry to conduct vocational training for employees.

When enterprises can not conduct the vocational training, guidance is made to let employees participate the training course at the training center owned by the Ministry. Also, characterizing feature is that the vocational training conducted by enterprises are made open to general public, so that other persons than the employees of that enterprise can participate the vocational training conducted by that enterprise (Provided however, expenses must be borne.).

The Ministry of Science and Technology is also carrying out the enterpriser (entrepreneur) bringing up program, and such training programs as vocational training, quality management (intending to secure the ISO9000), etc. with an assistance from Germany. Financing is also provided to business operators in relation to the bringing up the enterprisers (entrepreneurs).

Similar vocational training is conducted by the Chamber of Commerce and Industry, thus various ministries and organizations are already carrying out the technical support measures for small and medium enterprises, but as the ministerial administration is carried out in a vertically separated structures, the technical supports being made by one organization have absolutely no relationship with those made by other ministries.

4-5-3-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

The proposal of the JICA consists of a small and medium enterprise development policy of a full-set type, which is based on a small and medium enterprise law of Japan type and has the fostering of supporting industries serving as a lever, and which intends to establish the diagnosis system and to bring up small and medium enterprise diagnosis specialists and to establish the necessary financing system.

Such way of thinking and approach has certain aspects which do not match the small and medium enterprise development policy of Europe and America, in which a completely free competition is maintained. At present it is not known which one of these policies the Vietnam will adopt. However, if the proposal of Japan is accepted, such proposed system as an establishment of financing system for small and medium enterprises and an establishment of diagnosis system are to be made along the proposal made in the small and medium enterprise investigation in Vietnam and the proposal in the Miyazawa Scheme Project.

4-6 Other Asian countries

4-6-1 Bangladesh

4-6-1-1 Already consolidated legal system

While the independence of People's Republic of Bangladesh was made on December 16, 1971, the country has a long political and legal history before that. As the history of legal system is generally divided, there were four stages of "Hindu Period," "Muslim Period," "British Ruling Period," and "Present Period." The legal system of Bangladesh is not totally new system made after the independence, instead it has been progressively formed along with the history.

The “ Muslim Period ” started since around 1100, and “ British Ruling Period ” started from the unity to England in 1757, then the “ Present Period ” started from the independence of India and Pakistan in 1947. A number of legal systems were established in the latter half of the British Ruling Period, after an elapse of several centuries after the Muslim Period. Therefore, the legal system of Bangladesh comprises a mixture of Indo-Mughal Law and British Law, where the influence of the British law consisting of the Common Law and Equity is particularly distinctive. Even after leaving the political ruling of England in 1947, there has been no change in the basic structure in legal system even if the country acquired the independence politically.

THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH was adopted in the Diet on November 4, 1972 and was enforced on December 16, 1972.

The Article 15 of this CONSTITUTION prescribes as follows:

It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens -

- (a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;
- (b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work;
- (c) the right to reasonable rest, recreation and leisure; and
- (d) the right to social security, that is to say, to public assistance in case of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.

Concerning the property right the Article 13 of the CONSTITUTION prescribes as follows:

The people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms -

- (a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalized public sector embracing the key sectors of the economy;
- (b) co-operative ownership, that is ownership by co-operatives on behalf of the members within such limits as may be prescribed by law; and

- (c) private ownership, that is ownership by individuals within such limits as may be prescribed by law.

As main enacted laws are picked up in the field of civil and commercial code, there are Specific Relief Act 1877, Trust Act 1882, Transfer of Property Act 1882, Registration Act 1908 in the field of civil code, and there are Contract Act 1872, Partnership Act 1932, Sale of Goods Act 1930, Negotiable Instruments Act 1881, Companies Act 1994 (which modified the law of 1913 and was promulgated on September 12, 1994, and enforced on January 1, 1995.) in the field of commercial code. Here the Companies Act prescribes also on Registration and Winding Up.

As labor laws, there are Workmen's Compensation Act 1923, Factories Act 1965, Mines Act 1923, Industrial Relations Ordinance 1969.

According to the Companies Act 1944, companies are divided into Limited Companies and Unlimited Companies, and Limited Companies are further divided into Company limited by shares and Company limited by guarantees. The Company limited by shares is divided into Private limited companies and Public limited companies.

Private limited companies are companies which

- a) limits the transfer of shares;
 - b) limits the number of partners (excluding employees) to 2 or more and 50 or less;
 - c) prohibits the offering for public subscription of investment to shares and debentures; and
 - d) initiates business from the day of establishment,
- under the Articles.

Public limited companies shall

- a) offer public subscription to investment to shares and to debentures with the prospectus which complies the requirement of the Companies Act, 1994 and the Securities and Exchange Commission Act, 1993;
- b) make the number of partners to 7 or more (no upper limit);
- c) have 3 or more directors;
- d) must receive a business initiation certificate from Registrar of Joint Stock Companies for initiating business.

4-6-1-2 Problems arising in enforcing legislation

While the legal system of Bangladesh is based on the Common Law, consolidation of the system has been promoted as a principle by enacted laws. The basic preparation of enacted laws has been completed as a matter of formality through the Colonial Period and the Pakistan Period, it will be necessary to make proper enforcement in such manner that the “ Rule of Law ” which is the basic principle of the British and American Law can be established.

4-6-1-3 Problems caused by introduction of the international accounting standards

(1) Differences between the international accounting standards and Bangladesh accounting standards

An introduction of the international accounting standards was started, but there are still many differences. The differences related to small and medium enterprises can be compared by the Table shown below. In Bangladesh, every enterprise including large enterprise is following Bangladesh accounting standards. (As there is a stock market, there is the listing standards for stock market, etc. Therefore, the cash flow statement is considered even in large enterprises, and listed enterprises.)

(The Asian Development Bank is providing supports on building of project accounting within the government and audit system as a part of improvement of management method, in the project of the Strengthening project portfolio performance.

	International Accounting Standards	Bangladesh Accounting Standards
Inventory	Appraisal with the lower-of-cost-or-market method Unrealized profit from internal transfer price is deductible.	Cost method. Devaluation can be made by adopting the lower-of-cost-or-market method. The International Accounting Standards are complied with.
Accounts receivable	Estimated uncollectible bad debts are accounted for.	The International Accounting Standards are complied with.
Tangible fixed asset	Cost or reevaluated value Depreciation with estimated service life.	The International Accounting Standards are complied with.
Intangible fixed asset	Experimental and research expenses shall be reckoned up on accrual basis. Goodwill shall be depreciated.	Experimental and research expenses shall be depreciated based on the number of years of effectiveness. The International Accounting Standards are complied with.
Investment	Daughter companies shall be included in consolidated accounting. Affiliated companies shall be treated based on the equity method. Lower-of-cost-or-market method needs to be applied.	Same as the International Accounting Standards
Accrual basis accounting	All expenses shall be accounted for on accrual basis.	Same as the International Accounting Standards
Allowance	Contingent charge and loss shall be accounted for on estimate basis.	Same as the International Accounting Standards
Provision for taxes payable	Deferred taxes shall be accounted for.	Deferred taxes are accounted for.
Profit and loss calculation	All incomes and expenses shall be accounted for.	Accounting for lease and accounting for pension are being studied.

(2) Impact the difference might have on accounting practice

Experimental and research expenses and accounting for lease constitute big differences. As substantial amount of experimental and research expenses is not anticipated in small and medium enterprises, this will not create big problems. But, as the accounting for lease has not been employed, a capital lease is not accounted as asset, instead it is treated as expenses when lease fee is paid, thus an actual state of composition of asset is not correctly indicated.

It results in not only the profit and loss for specific year not being reported correctly but also the financial status forecast for subsequent years becoming unavoidably erroneous. (Leasing business has already started in Bangladesh.)

4-6-1-4 Current state of abiding by the accounting standards at small and medium enterprise level and the points at issue

(1) The present state of tax accounting

Among non-State enterprises, many medium enterprises are joint ventures with foreign capital.

Although it is necessary to report the accounting to the home country of such foreign capital, the Bangladesh accounting standards are largely based on. For taxation point of view, many such enterprises make adjustments for taxation and submit tax returns with the help of accounting firms.

On the other hand, small enterprises of Bangladesh are supposed to be business of a cottage industry scale. Accounting records are not prepared and at the same time their taxable income is of a minor level, thus they are usually taxed with rough estimates made in tax examination.

(2) Role of accounting firms

Many large enterprises listed in the stock market and medium enterprises, which are joint ventures with foreign capital, have relations with accounting firms. And accounting firms usually give guidance in preparing accounts based on the Bangladesh accounting standards. Also, they prepare tax returns for such enterprises based on such accounts, and in this respect play a certain role. However, as small enterprises are not using accounting firms, almost no role is played by accounting firms there.

4-6-1-5 The present state of the taxation system and the points at issue

(1) Tax collection system

There are tax laws and the operations of the taxation system have been improved. The organization of taxation offices is substantially contaminated with corruption, and are not taxpayer-oriented. Therefore, there is no concept of careful protection to foster small and medium enterprises. Thus, there is no small and medium enterprise specific preferential taxation system.

Number of individuals who are paying tax is less than 290 thousand in the country with a population of 100 million or more.

(2) Preferential taxation system for investing enterprises including small and medium enterprises

As explained above, there is no small and medium enterprise specific preferential taxation system. Instead, the standard corporation income tax with ratio of 40% is reduced to 25% for joint venture enterprises with foreign capital as the preferential measures for them. A 100% refund of income tax is admitted for small enterprises which have made the investment. Enterprises which made investment in the special economic zone will be exempted from income tax for 12 years, and enterprises which have made investment in the areas which have been already developed will be exempted from income tax for 5 years. Enterprises which have made investment in an area which is being developed will be exempted from income tax for 7 years, and enterprises which have made investment in an undeveloped area will be exempted from income tax for 9 years.

Further, enterprises which have invested in the export processing zone (Dacca and Chittagong) will be exempted from income tax for 10 years. They will have a reduction in or exempted from the VAT (Value Added Tax) of 15%. Concerning individual income tax, foreign engineers are treated preferentially and they are exempted from income tax for 3 years.

(3) Actual state of tax examination

Tax examination is carried out with a system in which things are decided by a negotiation. That is, taxable income is not computed based on the provisions of tax law, instead an amount of tax is decided with a system in which an assumption is made based on a scale of business in many cases. Also, as persons in charge of tax examination are not familiar with taxation work, substantial confusion took place when the VAT was introduced, and these officials find small and medium enterprises and individual businessmen operating in the market of a town, and levy small amount of the VAT on them. Further, they charge the same amount of VAT in the second year, then increase the tax by 10% each year in the third year on, thus increasing tax revenue.

Small and medium enterprises which prepare and keep accounting books are rare, and the taxation examination is carried out by selecting 20% of taxpayers with computers as a random sampling. While there are 700 thousand holders of taxpayer numbers in the country, it is assumed that there are actually 5 times more persons who have obligation to pay tax. Also, taxpayers and commercial registration are linked together, and high taxpayers are juridical persons. While the government intends to fortify the taxation examination on the VAT, this will help the examination of the other side.

Tax revenue from value added tax (50.5 billion Taka) and revenue from customs duty paid by foreign juridical persons (50 billion Taka) are still more important than the tax revenue from corporate income tax and individual income tax (24.7 billion Taka).

4-6-1-6 The present state of the policy for small and medium enterprises and the points at issue

Bangladesh's policy for development of small and medium size enterprises

Item	Name of legal regulations and systems etc.	Remarks
National plan	The Fifth Five Year Plan 1997-2002	There is the Bangladesh 2020: A Long-run Perspective Study, The World Bank, 1998, as a long term vision.
Small and medium enterprises development plan	None	A development policy is thought of by industrial sub-sectors, but there is no development policy in which small and medium enterprises themselves are taken as a sector.
Organization in charge of policy	Ministry of Industry Bangladesh Small and Cottage Industries Corporation	
(1) Small and Medium Enterprise Law	None	
(2) Consolidation of management basis		
1) Financial measures		
2) Taxation system measures		
3) Organizing measures		
4) Fair trade promotion measures		
5) Coordination measures by business fields		
6) Measures for ensuring demand from public offices		
7) Bankruptcy prevention measures		
(3) Supporting structural reforms		
1) Corporate management reform support measures		
2) Support measures for new business startup, etc.		
3) Technical capability improvement support measures		
4) Plenitude in know-how-oriented management resources		
5) Informatization measures		
6) Measures for high mechanization		
7) Regional small and medium enterprise measures		
8) Central city vitalization measures		
9) Logistics streamlining measures		
10) Labor measures		
11) Energy and environment measures		
12) Internationalization measures		
(4) Small-scale business measures		NGO
(5) Other measures		

(1) Industrial structure and small and medium enterprise sector of Bangladesh

In the economy of Bangladesh, the GDP was 32, 838 million US Dollars (1997, World Bank, " Report on World Development, " 1998/99), and the value added component ratio was 30% for the agricultural sector, 17% for the industrial sector (of which 9% was for manufacturing industries), and 53% for service sector (ibid).

According to the explanation by the Ministry of Industry in Bangladesh, the classification of small and medium enterprises is defined as follows. Also, as to labor absorbing power, 12 % of the total labors are absorbed by industrial sector, 82% of which are absorbed by small enterprises and small-scale enterprises.

Classification of enterprises	Definition	Number of enterprises	Labor absorbing power in industrial sector
Large enterprises	Enterprises having 100 or more employees or 300 million or more Taka of capital	About 3,000 companies	
Medium enterprises	Enterprises having 50 - 99 employees or capital of 100 to 300 million Taka		
Small enterprises	Enterprises having less than 50 employees or capital of less than 100 million Taka	5.3 thousand companies	
Small-scale enterprises	Cottage industry, being operated within a family dwelling space as family business.	485 thousand companies	82%

According to the explanation made by the Ministry of Industry, main sub-sectors of the small and medium enterprises are food processing, sewn products manufacturing, leather, ceramics, light industry, electric products, electronic products, handicraft, and the contribution to the GDP is about 5%, employing about 5 million workers.

The " Bangladesh 2020: A Long-run Perspective Study, " 1998 was issued as the long term national vision of Bangladesh with a cooperation of the World Bank, and here education of human resources and management of water resources are taken up as major issues, and very little is mentioned about a development of industry.

The Fifth Five Year Plan 1997-2002 has been published as the national plan by the Planning Committee, Ministry of Planning. Here again industrial development policy is not taken up here with particular emphasis placed in the small and medium enterprises, to our regret, but the industrial development policy is taken up by major industrial sub-sectors such as textile industry sector, leather industry sector, where such way of thinking is adopted that development of small and medium enterprises is carried out as the sector development policy within these industrial sector development policy.

(2) Small and medium enterprise policy

While the development of industry in Bangladesh is carried out with the Ministry of Industries

serving as its core organization, the authority to carry out the policy for small enterprises and small-scale enterprises is delegated to the BSCIC: Bangladesh Small and Cottage Industries Corporation.

The Ministry of Industry summarized the industrial policy as the Industrial Policy 1999, and clarified the definition of classification of the small and medium enterprises mentioned above in the Chapter 4 of the Policy, and declared the policy to be taken by the BSCIC on small enterprises and small-scale enterprises in the Chapter 9 of the same, and the Ministry has decided to carry out the following measures by using the BSCIC for development of small enterprises and small-scale enterprises:

Guarantee of credit;

Providing the asset of BSCIC;

Carrying out the enterprising plan for female workers, young unemployed persons, skilled workers, labors returned home, labors without land;

Consolidation of infrastructure (related to education and training) for small enterprises and small-scale enterprises; and

Supporting the market development for products of small enterprises and small-scale enterprises.

The Ministry has also decided to build the fund and the financing scheme particularly intended for small-scale enterprises.

1) Financing for small and medium enterprises

In Bangladesh, there are state operated commercial banks and private sector commercial banks and security market. Thus financing tools are prepared in every kind and type, but as it is reviewed from the stand point of the financing for small and medium enterprises, such tools are not functioning at all. Such situation is resulted from various elements which are tangled in complicated manner, such as the government including the central bank having only weak power to lead the financing policy, and the circulation of fund not being made satisfactorily because of the unfairness and corruption which are not unusual in developing countries, financing institution side having no capability of financing examination, etc., etc., and the government has declared that it shall make financial reform, but actually the reform is making very little progress.

However, NGO activities are very active, and measures against poverty are working rather well with the micro-financing including the Grameen Bank serving as core.

2) Training and technical supports

These are being done by Chamber of Commerce and Industry, etc., but the parties carrying out

them do not have sufficient fund and equipment, and the number of people to be worked on are just too many, and the activities being made are far short of meeting the requirement.

4-6-1-7 Future direction of the promotion of small and medium enterprises and related systems which need further consolidation

At present what is supporting the development of industry in Bangladesh is jute industry and sewn products industry, and there are no other products which are significant. Further, jute is declining industry, and sewn products are in a state that they are barely permitted to export thanks to the preferential import quota in the advanced countries (USA, Europe), and their competitiveness is at a very low level.

Development of industry is not working satisfactorily in Bangladesh not because its legal system is inadequate, but because the government is not capable of taking the initiative to promote the development of industry in a steady and stable manner.

As the breakthrough measure for this situation, there is an idea that limited parties are selected, and a limited commercial space is formed, and let it make success, then the case is made to be known bit by bit, thereby expanding the information. Similar schemes are working successfully in the Grameen bank and local electrification union in Bangladesh, and it is accepted as well established practice of overseas Chinese in Thailand and Malaysia and are known in southeastern Asia. This may be done for example by establishing a credit union of membership system in which members are investors, and the financing is made only with the credit guarantee by the members.

Chapter 5 Advanced Intellectual Assistance and Cooperation by Japan

5-1 Planned items of possible cooperation for arrangement of various systems

5-1-1 Legal system

While most of the countries which we have researched this time have almost finished arranging the enactment itself of laws, the cooperation for the revision, setting forth implementing order at the time of implementation or practical work for actual implementation of such already enacted laws will be quite effective also in the future.

For example, with respect to the time when four countries participating in the foundation of ASEAN was incorporated into the international trade system led by western countries and commenced arranging the economic system through acceptance of western laws, the modern (European and American) Civil Code was established in an almost similar period to Japan: in 1899 in Japan, in 1925-34 in Thailand, in 1848 in Indonesia and in 1888 in the Philippines which originally accepted the Spanish laws.

Therefore, these countries have the same experience as that of Japan which was, as a matter of fact, forced to accept western laws from the end of the 19th century to the beginning of the 20th century and had struggled to digest them. And now again, after the so-called Asian Financial Crisis, Thailand, Indonesia or others are being instructed by IMF or the World Bank etc. to enact and/or revise bankruptcy laws and/or competition laws etc. which are, in principle, based on a law theory which is close to common law (more particularly, the U.S. laws) and are undeniably struggling to digest them and to rehabilitate their economy. These struggles in principle resemble to Japan's experiences that, after the Meiji Restoration, Japan accepted civil law as the first modern (European and American) law system and, after its defeat of the World War II, was forced to transplant common law in areas of corporate law, corporate rehabilitation law or competition law etc. and that Japan is inevitably influenced by common law in areas of intellectual property right law or economic law such as the revision of the Copyright Law or of the Unfair Competition Prevention Law.

If these facts are taken into consideration, it can be said that the accumulation of Japan's experiences and practical work are quite useful as the reference on implementation of administrative practical work, and Japan's cooperation for setting forth implementing order at the time of implementation or practical work for actual implementation will also be quite useful for the other countries. Further, the arrangement of economic system of these countries are closely connected to Japan's economic system through direct investment, and as such it is considered that there is a relatively large allowance for accepting cooperation which steps deeply into the economic base.

Further, the technical cooperation such as the preparation of the compilation of laws and regulations for smooth implementation of laws or the arrangement of network database system of law information for administrative authorities and courts will be effective. In addition, in connection with these, the cooperation for administration for small and medium enterprises, human resources rearing for the arrangement and implementation of corporate law will also become important.

5-1-2 Tax and accounting system

First of all, with regard to tax, customs duties imposed in connection with export and import are one of biggest sources of income for developing countries, and a circumstance is understandable in which the purpose of customs duties is to encourage export of domestic products and to curb the import and at the same time there are no other choices for such countries but to rely on relatively cheaper imported goods which cannot be produced domestically. Under such circumstance, the determination of rate and items of customs duties are entrusted to each country as the exercise of national sovereignty, and if its customs system is inadequate, assistance is necessary to fill up the system. However, within the framework of assistance of this time for small and medium enterprises, such assistance for the arrangement of customs system is thought to be unnecessary for ten countries which we have visited. In EU and in ASEAN, customs duties are planned to be reduced to the level of 5% in the near future (in the year of 2003).

On the other hand, with respect to value added tax, if securing of revenue sources is purported and tax revenue from corporate tax is scheduled to be increased, the arrangement of value added tax, which is capable of grasping national economy as a preliminary step and of slimming tax collection work, is an urgent matter. Although a high tax rate is not desirable in developing countries from the viewpoint of the equalization of tax burden, but, if the effectiveness of corporate tax and income tax is to be enhanced in the future, the assistance for structuring of this value added tax system is important as a part of the arrangement of taxation system. For example, while the recent introduction is successful in Thailand, the arrangement of system was initiated in Cambodia but the achievement is not recorded yet.

And with respect to corporate tax, after the series of assistance for small and medium enterprises have realized some achievements, the assistance and project for collecting corporate tax from such small and medium enterprises will become necessary.

Considering that the understanding and recognition of people and officials-in-charge for tax of a country in question is important at the time of providing system arrangement for above-mentioned taxation items, training for officials-in-charge for tax becomes necessary. If confidence of people for officials-in-charge for tax is lacking, taxation system does not function. For example, officials-in-charge for tax in Indonesia and the Philippines are sometimes deprived of confidence as corrupted public service personnel. Therefore, the enhancement of tax collection techniques and tax knowledge through tax training are necessary. In addition, it is considered that the training of people relative to tax should be carried out by effectively utilizing cooperation of Chamber of Commerce and Industry of a region and the involvement of private accounting firms as well as by using television or newspaper. Further, not only existing accounting firms, as is shown in a case which started in Thailand, a person such as an instructor for small and medium enterprises can also take a role of tax counseling and guidance (and accounting counseling and guidance), and it can also be said that such human resources should be reared in the future.

As for accounting system, small and medium enterprises do not necessarily adapt to the international accounting standards successfully which both developed and developing countries have

begun introducing. In this connection, in order to promote the adaptation by small and medium enterprises, the partial application is considered as practical. The EBRD or other organizations exempt the application of a portion of the international accounting standards according to the level of development of a country in question. While this relates to the arrangement of operation of accounting standard of each country, the adjustment of the international accounting standards with the accounting standard of each country is a matter of consideration for each country, and it can be said that it is especially important from the standpoint of legal assistance of small and medium enterprises.

Incidentally, whether in the form of a law or in the form announced by an authoritative organization as an accounting standard, ten countries which we have visited this time had accounting standards. Those accounting standards differ in terms of precision, and some standards had certain devices arranged for small and medium enterprises. From the standpoint of the assistance for small and medium enterprises, while the practice in Laos may be practical in that enterprises are classified into three categories of large, medium and small enterprises, Cambodia temporarily uses the French accounting system in which the accounting standard is considerably minute with detailed explanation which allows no discretion. Tax laws in Indonesia also accompany remarks with detailed explanation like textbooks. After all, for the purpose of making accounting standards of small and medium enterprises more practical, the preparation of the revised version of accounting standards of respective country will become necessary, which can cope with the application of the International Accounting Standards with necessary modification with regard to items which are not explicitly set forth by accounting standards of respective country, and, in addition, it is necessary to prepare more detailed explanation, remarks, supplemental provisions or detailed rules. It can be said that the cooperation in this area may be possible.

Lastly, whether or not small and medium enterprises can prepare accurate accounting books and records will determine whether accounting standards will be effective or whether tax laws can contribute to the finance of a country. Therefore, the so-called extension activity to prepare accounting books and records accurately becomes indispensable through cooperation of local Chamber of Commerce and Industry, City Offices or tax offices. Since the involvement of accounting firms cannot be mandatory, a cooperation to set up a system may be possible in which the license like a tax book keeper, the type of involvement of which is newer than the past one, will be established and such license can be extended not only to cities but also to local areas.

5-1-3 Small and medium enterprises policy

There are roughly two ways of thinking with regard to the small and medium enterprises policy. One is, the Japanese style, to set forth a law, such as the Small and Medium Enterprise Basic Law, or a guideline or program having enforcement power similar to laws, which determines the framework of the promotion policy for small and medium enterprises, to provide assistance to the management base of small and medium enterprises themselves concentrating on technical assistance and financial assistance and then to rear the domestic industry carrying out the adjustment of industrial structure including export promotion as well as rearing supporting industries etc.

Under this scenario, the establishment of the promotion system of small and medium enterprises of the so-called full-set type, or the Japanese type, will be placed in the center, and the followings can be considered as possible items for assistance in this case. Of course, while there is a way of thinking that it is all right to set up all of these as a package and then assist item by item which can be used centering such portion as fits the other country, what should be stressed here is that the promotion policy for small and medium enterprises not with an individual menu but with a comprehensive menu, which is therefore a full-set type and stratified type as a whole, is aimed to be established.

Assistance to set up a master plan for promoting small and medium enterprises;

Assistance to set up a basic law for small and medium enterprises;

Assistance to develop a system for supporting the arrangement of managerial base;

Countermeasures for financing (strengthening of loan system for small and medium enterprises or establishment of credit guarantee system, etc.);

Countermeasures for taxation (assistance for establishing preferential taxation system in a form of a privileged tax etc. for rearing industries or assistance for simplification of procedures);

Countermeasures for organization (strengthening of chamber of commerce and industry or assistance for strengthening systematization of industrial organization, etc.);

Countermeasures for rationalization of transaction (assistance for setting forth anti-trust laws or assistance for establishing anti-trust control commission, etc.);

Countermeasures for adjusting business areas (assistance for establishing diagnosis system, etc.);

Countermeasures for securing government and official demand (assistance for establishing government and official procurement system, etc.);

Countermeasures for preventing bankruptcy (assistance for setting forth bankruptcy laws, etc.);

Assistance for restructuring;

Countermeasures for assisting managerial innovation (assistance for establishing management guidance system or dispatching experts, etc.);

Countermeasures for assisting entrepreneurial business (assistance for establishing incubator or venture capital system, etc.);

Countermeasures for assisting the enhancement of technology (assistance for technology center or dispatching experts, etc.);

Filling up soft managerial resources (ibid)

Countermeasures for information (assistance for building up information network of small and medium enterprises, etc.);

Countermeasures for advanced industry (assistance for developing industrial complex, etc.)

Countermeasures for local small and medium enterprises (assistance for setting up international plus local promotion policy such as development of the Mekong River Basin, etc.);

Countermeasures for energy and environment (assistance for efforts to curb energy consumption and for environmental measures, etc.).

Another way of thinking is, an European and American way of thinking, to cause small and medium enterprises as well as large enterprises, excluding small-scale business, to be subject to the complete free competition without discrimination and to reject any policies specializing in small and medium enterprises. In this case, too, the assistance as shown below for arranging laws and regulations for establishing Playing Field for competition is considered to be possible:

Countermeasures for financing (strengthening of loan system or establishment of credit guarantee system, etc.);

Countermeasures for taxation (assistance for establishing transparent and equal taxation);

Countermeasures for organization (strengthening of chamber of commerce and industry or assistance for strengthening systematization of industrial organization, etc.);

Countermeasures for rationalization of transaction (assistance for setting forth anti-trust laws or for establishing anti-trust control commission, etc.);

Countermeasures for preventing bankruptcy (assistance for setting forth bankruptcy laws, etc.)

5-2 Cooperation implementation plan

5-2-1 Method of cooperation in various countries according to degree of economic development

As we have reviewed so far, countries in central and eastern Europe and Asia are in considerably different circumstance of legal and institutional aspects according to the degree of economic development (the industrialization and stages of small and medium enterprises promotion within the industrialization). There are countries which have already implemented, after setting forth relevant legal system, its revision many times in order to adjust to their domestic situation, which have

enacted a new law just recently or which will start arranging a basic legal system from now on, so it goes. When consideration is given as to how Japan can cooperate for such area in the future, Japan should not attempt to provide all of the countries with the same program as the legal system assistance, but it should set up an individual strategy for each country taking into consideration the stage of development, the status of arrangement or the direction of industrial promotion etc. Now, we will consider a plan of cooperation which is a reference for the Japanese Government at the time of setting up such strategy in the future.

To begin with, the following three points can be listed as items for consideration in classifying various countries:

- 1) The stage of industrial promotion and the contents of assistance (economic sector promotion policy including small and medium enterprises);
- 2) The status of arrangement of legal system (basic legal system, detailed rules for implementation, implementation system); and
- 3) Japan's possibility of contribution.

Further, with respect to (3), since considerable difference can be observed in terms of direct investment from Japan, export and import relations, diplomatic relations as well as degree of other political and economic relations, the possibility of contribution in the future is classified as follows in reference to direct investment which has especially close relation with the promotion of small and medium enterprises. Firstly, Japan's direct investment to Poland at the end of June 1998 was 11 cases with accumulated invested amount of \$178 million U.S. Dollars. Although a drastic increase of \$137 million U.S. Dollars as compared with that at the end of June 1997 was recorded, however, in terms of accumulated total of direct investment to Poland, Japan only occupied 0.8%. The ranking by country shows the U.S. as No.1 (20.8%), Germany as No.2 (14.3%) and Italy No.3 (8.3%). (Statistics of direct investment is from JETRO Investment White Paper 1999.) The same applies hereafter.)

With respect to Bulgaria, while an investment of \$1.9 million U.S. Dollars was newly made by Japan in 1997, and the accumulated invested amount became \$3.09 million U.S. Dollars as at the end of August 1998, in terms of the ratio of accumulated total of direct investment, Japan only occupied 0.2%. The ranking by country shows Germany as No.1 (18.0%), Belgium as No.2 (18.0%) and the U.S. No.3 (8.3%), and Japan is 23rd.

On the other hand, with respect to the direct investment from Japan to Asian countries, the amount of investment to Thailand in 1997 is 163.4 billion Bahts occupying 49.1% of direct investment by foreign countries to Thailand, and the ranking by country is No.1 successively from 1994. Japan's investment to Malaysia occupied 27.0% of the total foreign direct investment in 1996 (ranking by country: No.1), 18.9% in 1987 (ranking by country: No.2, while No.1 is the U.S.), 23.6% as of August 1998 (ranking by country: No.2, while No.1 is the U.S.).

With respect to Indonesia, Japan's accumulated investment from 1967 to the end of 1997 occupies 16.4% of the total foreign direct investment and is placed as No.1 in the ranking by country (No.2 is the U.K. and No.3 is Singapore), with respect to the Philippines, on the basis of approval by Philippines Economic District Agency (total of investment by domestic and foreign capital), Japan's investment occupies 68.9% of total invested amount in 1995 (ranking by country: No.1, while No.2 is Korea and No.3 is the U.S.), 47.4% in 1996 (ranking by country: No.1, while No.2 is the Philippines and No.3 is Korea) and 48.4% in 1997 (ranking by country: No.1, while No.2 is the U.S. and No.3 is Korea).

With respect to Vietnam, Japan's accumulated investment from 1993 to September 1998 occupies 10.8% of the total foreign direct investment and is placed as No.3 in the ranking by country (No.1 is Singapore and No.2 is Taiwan), with respect to Cambodia, although the amount of Japan's investment in 1997 is unknown, the ranking by country for investment by domestic and foreign capital shows Korea as No.1 (19.2%), Malaysia as No.2 (14.2%) and Taiwan as No.3 (13.0%), with respect to Laos, Japan's investment occupies 3.8% among the total foreign direct investment in 1997 with No.5 in the ranking by country (No.1 is Malaysia, No. 2 is Thailand, No.3 is Korea. Accumulated total from 1988 to 1997 shows Thailand, which occupies approximately 50% of the total, as No.1.). Lastly, with respect to Bangladesh, Japan's accumulated investment from 1993 to the end of 1997 occupies 15.6% of the total foreign direct investment and is placed as No.5 in the ranking by country (No.1 is the U.S., No.2 is Malaysia and No.3 is Korea).

Based on the above data, the arrangement of ten countries which we have visited this time is as shown below:

			Status of Arrangement of Legal System			
			Not Arranged Yet	Already Arranged, Detailed Rules and System for Implementation		
				Degree of Implementation - Low	Degree of Implementation - Fairly Good	Degree of Implementation - High
Possibility of Japan's Contribution	Relatively Small			Bulgaria		Poland
	Relatively Large	Direct Investment - Small	Cambodia	Laos, Bangladesh		
		Direct Investment - Large		Vietnam	Indonesia, Malaysia, The Philippines, Thailand	

Firstly, with respect to two countries which have relatively small relations with Japan, if, as in the case of Poland, the direction of industrial promotion is relatively clear, conditions are in order and the status of progress of arranging laws develops by several steps ahead, it is possible to cooperate on such areas as intellectual property right, recognition or authentication system which are reported by, for example, EU Report that the contents are behind the times by narrowing down subjects to such individual area. Further, one idea can be imagined which backs up the reinforcement of laws relative to the promotion of small and medium enterprises by means of assisting the enactment of the law for the facilitation of subcontracting or the reinforcement of the law for promoting local industry upon considering certain formula which is not inconsistent with EU Directive not from the implications of distorting market but from the implications of reinforcing the subcontracting structure for the purpose of enhancing the economic efficiency of a market as a whole.

However, considering that this is the area already served by European and American countries and that Japan's influence is small, its possibility of realization is quite doubtful. In such case, it would be wise for us not to stick to the aspect of legal system, but it would be appropriate for us to cooperate on an individual program which Japan has superiority, such as the improvement of productivity, etc. And, with respect to the policies themselves for small and medium enterprises, the traditional pattern to supplement the inferiority of small and medium enterprises, the economically weak, would not be suitable. In this sense, in order to facilitate subcontracting transaction, there would be a room for cooperation from the standpoint of securing proper conditions for transaction based on Japan's achievement and experience of arrangement and implementation of the Law on the Prevention of Delay in the Payment of Subcontracting Charges and Related Matters or the Law on the Promotion of Subcontracting Small and Medium Enterprises.

Although it would not be realistic for Japan to cooperate with Bulgaria, similar to Poland, for establishing legal system itself, the possibility would not be zero. For example, even if laws such as corporate law or contract law exists, the government will have difficulty in operating legal system itself in the future. Accordingly, it is meaningful to step into the aspect of detailed rules for implementation, which is not yet served by other donors in large scale, and cooperate during the process of setting forth such rules. And it can lead to the compilation of the collection of laws and regulations for smooth implementation of laws or technical assistance for arranging legal information network database system for administrative authorities or courts. And in case of Bulgaria, the direction of industrialization or promotion of small and medium enterprises is not fixed yet clearly. While it would be a direction which is consistent with that of EU or the direction considering its position within EU, it is meaningful for Japan to assist in fixing this direction and to assist in arranging and strengthening relevant laws for the promotion of small and medium enterprises which enable the implementation of its realization in a reasonable manner.

Further, in case of countries whose concern is directed to EU, such as Bulgaria, it would be all right if Japan's corporations largely advance and have influence on national economy, but if it is not the case, it is necessary to pay attention to the aspect of consistency of systems with other EU Member States or such other countries as will become Member States in the future.

And since both countries belong to civil law system, which is the same with Japan, the cooperation in the area of the administration of small and medium enterprises and of rearing human resources for arranging and implementing corporate laws is considered to be meaningful.

Next, with respect to Indonesia, Malaysia, The Philippines and Thailand among the eight countries on which Japan's influence is considerable, the idea of cooperation can be raised which, similar to two countries as mentioned above, can lead to the assistance for arranging database system, in addition to detailed rules for implementation, and contribute from the aspect of offering information. Since these countries are under the large economic influence of Japan, it is considered that the cooperation expanded to the core system of each country will be accepted relatively easily and that a direct merit will be returned when Japanese companies engage in business there in the future.

With respect to Laos, Vietnam and Bangladesh, while the legal system is being arranged, the circumstance remains in which laws which are indispensable for utilization of infrastructure are not yet arranged: for example, in Laos, the Road Traffic Law to activate distribution is not yet arranged. It can be said that the possibility of Japan's cooperation to the area of arrangement or revision of laws is large, which are thought to be indispensable for social and economic life of modern era.

Further, even if a law has been already enacted, it is expected that the law will become gradually adjusted to the circumstance of the country through revision of several times in the future and that Japan will assist the basic revision of laws and, if Japan has some surplus power, will cooperate in the area of system. However, what should be noted here is that if legal system assistance within a broad meaning is simply provided one by one without narrowing down the subjects, a situation can arise in which effects would not be obvious and it would be difficult for Japan side to accumulate experience of assistance.

As for Cambodia which has a long way to go for the preliminary arrangement of laws, the cooperation for enactment itself of laws is necessary, as has been already carried out by JICA in connection with the Civil Code or the Code of Civil Procedure. With respect to a country which has little experience of drafting laws, it is necessary to recognize that there is a concern that the degree of progress will become extremely low unless Japan side furnishes kindest cooperation in which Japan side makes clear a desirable overall system (or matrix) of laws, prepares a complete draft laws in line with such system and makes available for the country in question.

However, what should be noted here is that if experts from Japan, which adopts civil law system, provide cooperation to countries which adopt common law system, it might cause unnecessary confusion. Cambodia has a plan to arrange commercial codes under the auspices of the World Bank etc. on the one hand, and it is explicitly announced that these laws will be a legal system based on common law. It is worried that the enactment of the Civil Code, the Commercial Code and the Code of Civil Procedure, which are all closely related each other, based on different legal system will blow out various problems in the implementation stages of the future. Further, in Cambodia, the tradition of legal system (based on civil law) of the colonial days which once existed by and large is scarcely

left because of prolonged disturbances of war, and there are actually no human resources who have expertise of law. Substantial time is needed for arranging the system for both soft and hard aspects. Although it can be said that the room for Japan's cooperation is all the more broad, however, even in such case, the close adjustment with cooperation contents by other organization is always necessary. Therefore, the assistance for simply enacting corporate laws should not be aimed at, more over, it is necessary to set up a cooperation plan after understanding these actual circumstances. If the provision of assistance is decided even under such circumstances, the plan should be drafted after experts of common law are secured in Japan.

Further, in Cambodia, although the enacted laws are to be promulgated by the official gazette, the distribution of official gazette is not so satisfactory. It is considered that the assistance from the preparation of official gazette, the compilation of the collection of laws and regulations for smooth implementation of laws or technical assistance for arranging legal information network database system for administrative authorities or courts is quite effective.

Incidentally, since the promotion of small and medium enterprises is still the main objectives of the cooperation of this time for arranging legal system, when we think about a cooperation method as mentioned above, it is necessary to take into consideration circumstances of respective country relative to the promotion of industry and small and medium enterprises and to study the cooperation method in connection with such circumstances. Accordingly, we classify each country into the following items:

Stage of Industrial Development and Contents of Assistance	Name of Country
1) Country which centers on the first industrial sector (agriculture, forestry and fishery) and which has a policy to gradually promote small and medium enterprises centering more or less on this first sector in the future. In this sense, the promotion of small and medium enterprises centers on the processing industry for products of agriculture, forestry and fishery, manual industry and assistance relating to the industrial promotion for their distribution.	Laos
2) Country which centers on the first sector and which needs industrialization from the point of industrial development as well as from the government policy. Country, which cannot find the direction of promotion policy or promotion strategy yet. Therefore, as the first step, the assistance centers on the processing industry for products of agriculture, forestry and fishery, manual industry and the industrialization after the industrial promotion for their distribution, fixing the direction and strategy of small and medium enterprises promotion in the process and strengthening the direction of industrial promotion toward the next second step. With respect to the legal system arrangement, the effective method is to arrange the Small and Medium Enterprise Basic Law, after that to make clear which relative laws to be arranged and then to arrange such laws.	Bulgaria, Cambodia, Vietnam, Bangladesh
3) Country which is about to get rid of economic and social structure which centers on the first industrial sector and in which basic factors for industrialization (establishment of industrial zone, etc.) are partly satisfied. Therefore, the assistance centers on strengthening the direction or promotion system for industrialization as well as small and medium enterprises promotion in the process considering these existing factors and non-existing ones. With respect to the legal system arrangement, the effective method is to rearrange laws relating to small and medium enterprises promotion as a tool of industrial promotion, to systematize them and to arrange the missing legal system, rather than to arrange the Small and Medium Enterprise Basic Law.	Poland, The Philippines, Indonesia
4) Country which already centers on the second industrial sector (manufacturing industry) and the third industrial sector (service industry) and which has international exporting capability to some extent although surrounding countries or region is limited. Therefore, strategy or plan for industrialization needs no assistance, but rather, the assistance should be to narrow down the promotion of small and medium enterprises based on such strategy or plan and should center on the implementation system. With respect to the legal system arrangement, the effective method is to narrow down necessary tools required for reinforcing and promoting the small and medium enterprises sector among the internationalization or strengthening etc. of credit guarantee system and to arrange or revise them.	Malaysia, Thailand

It is necessary to judge in a comprehensive manner and discuss the cooperation contents based on the classification of legal system as mentioned before as well as this classification.

Lastly, when we consider Japan's cooperation in relation to international organizations, we see a tendency that Japan's cooperation itself with regard to small and medium enterprises promotion is carried out centering on the cooperation at the site level at which Japan is superior with paying little attention to activities carried out by other organizations. In this sense, frequent exchange of opinions seems to be necessary. It is necessary to regularly collect information on activities carried out by other organizations, to consider the contents and method of cooperation in which Japan can exercise Japan's excellent points or accumulated experiences while avoiding duplication with such activities (for example, cooperation focusing small and medium level rather than small-scale business, or cooperation with the framework of which utilizes an already-established one, such as by EBRD, but the implementation phase of which allows Japan's participation because of weak activity by other

organization) and to rearrange the framework which is understandable by international organizations as Japan's cooperation for small and medium enterprises. After that, it is required for Japan to cooperate in a method which Japan can appeal itself.

In connection with this, there exists a committee hosted by the World Bank in which persons-in-charge of small and medium enterprises promotion of 22 donors get together and discuss. Unfortunately, however, JICA's participation has been nominal so far, it finally decides to participate from a meeting held in Hanoi in April 2000. In future, it will be required to actively dispatch information rather than just attendance.

At the same time, in order to improve JICA's research and reporting capability of its undertakings to a level of internationally understandable one, for which it is often said that JICA's report is of no use when outsiders intend to refer, it can be considered that, for example, a workshop is held in Washington D.C. or elsewhere jointly with the World Bank on the result of research of this time, in which opinions of concerned persons can be widely heard. Further, it is considered to be quite meaningful that JICA's personnel, jointly with retained consultants, participate in the research itself by the World Bank in a position of research and planning and directly learn the methodology of other organizations.

5-3 Future tasks

The cooperation methods are as shown above. Lastly, it is necessary to slightly touch on the tasks at the time of implementing these methods. To begin with, the arrangement of best practice information can be listed. The first step to theorize experiences of Japan or other countries is to know their cases of success or failure, and then to proceed to structuring a framework for success by utilizing them. This is a matter currently promoted by a section in the World Bank in-charge for small and medium enterprises, and, with respect to the presentation of information for success cases especially in Asia, expectations by international organization to Japan's organization including JICA is not so small under any event.

Next, a proposal-type comprehensive assistance from Japan can be listed. What can be said in summarizing the whole of the research of this time is that the intellectual assistance is of no meaning by a claptrap correspondence or examination of contents and that, taking cooperation for intellectual property right or industrial standard as an example, it is necessary not only to provide hardware or technical assistance for rearing human resources on the spot, but also to consider the correspondence with grand strategy including cooperation in the system architecture or else. However, under the circumstance in which person-in-charge of government of the country in question, due to their local reasons, have difficulty in adjusting policies and legal system assistance within the framework of EU Directive, ASEAN or APEC and have no other choice but to take forestalled correspondence, the reality is that it is rather difficult for them to have surplus energy to set up such grand strategy. In this regard, although the form of request principle is taken, it can be said that a type of cooperation is required in which Japan does not simply dispatch legal experts upon the request by the other country, but in which Japan is actively involved even in the process of setting up such strategy and cooperates.

This exceeds, as a matter of course, a simple area of cooperation. Such activity will surely arrange the environment in which the extension of Japan's industrial standards will be carried out at the same time, in which Japan's corporations can easily engage in business with those in the country concerned in the future or in which number of countries which agree to Japan's proposal will increase in international organizations for industrial standards etc.