Country and Sector Background

1. Since 1990 Poland has been carrying out an ambitious, comprehensive program to eliminate the past central planning system and stabilize the economy. In contrast with prior flawed efforts, the program has made significant progress in shaping a market economy. The country has resumed growth and generally maintained overall macroeconomic stability (although inflation remains uncomfortably high). Poland thus has the opportunity to be a credible candidate for EU membership, but the realization of this possibility depends on the solution of difficult problems.

2. A cardinal one entails transforming Poland’s institutions to meet the demands of the fledgling market economy and democratic society. This task is complex for it implies the elaboration of a legitimate constitutional and legal framework. It also calls for enhancing the state’s capacity to play its redefined role more effectively, aost by reinventing the public administration. To be sure, useful changes have been made but these actions have been somewhat haphazard and lack a clear overall strategy. As a result, the necessary reforms remain largely unfulfilled.

3. The proposed project addresses one integral component of the public administration reform agenda: the judicial system. Progress to date has been remarkable. Important steps have been taken to adapt the legal system to the new political and economic order. These actions led to a quick settlement of issues about property rights, the commercial code and bankruptcies. Foreign investment legislation compares favorably with international standards. In 1992, the "Small Constitution" elaborated further new authorities and organs for the judicial branch. The Government also revised crucial aspects of its banking and Central Bank laws (rehabilitation proceedings of bad banks and banking supervision), moved to strengthen the legal framework for capital market activities, and submitted a law on collateral security. Several modifications to the Civil laws on Notariate, Perpetual Books (or Registries), inheritance, debtor-creditor relationships, and cooperative law were enacted in 1991. Legislation was enacted in 1994 changing real estate ownership from cooperative to individual private auspices.
Legislation on collateral security and establishing a registry of liens, 
amply discussed in the past three years, is pending approval.

4. A preliminary review of the judicial administration analysis has 
nevertheless identified several systemic problems:

A. Ineffective system. The laws and the way the courts apply 
them do not fully meet society's needs. Despite the efforts 
described above, "Private Law" has not yet evolved 
sufficiently to meet the pace of economic activity in a modern 
market society. Poland lacks in particular adequate property 
and other public registration means, which constitute an 
effective preventive mechanism for resolving conflicts (or at 
least clarifying disputes). The civil procedure code appears 
to be overly complex, and improved collateral law is needed. 
The enforcement of judgments appears to be erratic while 
litigation costs are very high, as are bailiffs’ charges. 
Although reformed in 1964, the legal framework for the 
operations of civil courts remains basically the one 
prevailing before World War II. And there are implicit 
incentives in the legal system that make enforcement of 
judicial decisions nearly impossible. A judicial decision can 
be overruled by tax authorities or ignored by bailiffs. All 
of these difficulties have discouraged recourse to the 
judiciary system, as indicated in the modest growth rate of 
litigation. There is consequently frustration with the 
judicial system.

B. Heavy Demands. In addition to the traditional dispute 
resolution task, the judiciary is also burdened with sundry 
registration functions, e.g., property, entities and (when new 
legislation is enacted) liens on movable properties. With the 
advent of the market economy, the legalization of generalized 
private property generated an abrupt demand for its 
registration, as did business incorporation. Registration 
requests increased ten-fold between 1991 and 1992. Also, the 
use of property as collateral sparked the need for a central 
lien registration. Further, all the legal cases previously 
under administrative determinations were transferred to the 
courts. All of these forces have put considerable pressure on 
the absorptive capacity of the judicial system. This is 
illustrated by the up to seven-month waiting period to 
register real estate property.

C. Low quality/efficiency of the Judicial Processes. Sector 
institutions—both the Justice Ministry which manages the 
courts and the latter themselves—are weak. They need to be 
modernized to respond to the new development challenges 
(increased business activity and complexity), the changes in 
the external environment (e.g., integration of Europe) and, 
perhaps most important, the concerns of a newly democratic 
society. Registration and dispute resolution functions, 
particularly with the aforementioned increased demands, are 
ill-managed due to outdated procedures and technology. There 
is now a sizeable bottleneck that simply cannot be dealt with
under the current paper-based methodology. Increased automation is a necessity to keep up with the volume and complexity of judicial operations.

D. Low Investment Budget. Most critical among problems faced by judicial institutions are lack of resources and growing backlogs. Administrative capacity is low due to low technology which in turn derives from traditional weak investment budget allocations. Operational budgets allow barely to maintain a labor intensive technology and require low salaries. Salaries are uncompetitive, so that the judicial system has considerable difficulties in attracting qualified support staff and in retaining qualified judges. Often, judges have an ephemeral journey through the judiciary as a fast track for the bar.

Objectives

5. The proposed project calls for infrastructural investment in the judiciary and technical assistance to strengthen the capacity of the courts in ways that would enhance efficient processing of cases, while also raising professional standards. If accomplished the project would help reduce those inhibitions to private sector investment emanating from high transaction costs and weak enforcement of legislation.

6. The Government recognizes the importance of suitable legal and regulatory frameworks for a more market-oriented economy. It also appreciates the relative backwardness of its court systems. There is thus a climate for reform. However, there has not been a thorough sector review. Consequently, the proposed project is limited to efforts to overcome a first round of priorities for improving the judicial system. The two main challenges the Polish authorities face regarding judiciary development are:

   a. To quickly find a strategy to cope with the growing need for registries; and,

   b. To define a mid-term strategy to act on contentious court management and general judiciary administration to avoid a quick down-grading of the quality of the judiciary.

7. Meeting both challenges would require a technological upgrade of the legal system. In addition, an inventory and a critical review of the current legal framework is indispensable. Whereas computers can substantially facilitate and enhance the implementation of legal systems, their effectiveness can be hampered by lack of minimum standards of uniformity, consistency and completeness of the legal framework.

8. In connection to reform of registration, the Polish authorities have made considerable progress on the legislative front, and have initiated studies to determine the system needs of an overhauled registry. After three years of national debate, a draft law on collateral has been finalized and is expected to be sent to parliament soon. The law establishes the framework for creation, maintenance and execution of liens, going beyond the limited registry of real estate
and mortgages in existence until now. In order to make this new law operative, it would be necessary to implement an automated registry system. The government has already begun investigating existing alternatives, with the help of USAID and other bilateral donors. The Norwegian registry system was proposed as the option to be adapted to the Polish environment, and the Norwegian government has expressed its willingness and interest in providing technical assistance for this purpose.

Description

9. The proposed project would include the following components: (i) automation of property and lien registries; (ii) training activities for the judiciary; and (iii) institutional development of the courts and the Ministry of Justice.

10. Automation of Registration. The project would finance the preparation and initial installation of automation of court registries. The automation of court registries would include real estate, legal persons (enterprises and companies) and liens on moveable assets (according to the requirements of the new collateral law). The project would finance the technical assistance required to prepare the project, the development and adaptation of software applications to handle the automation process, the hardware requirements as well as the cost of converting manual information to electronic media. Based on international experience this task may take as long as eight to ten years. A first stage, to be financed during the first five years, should be agreed upon with the Government.

11. Training. This component would define the scope of training needs to support the program of judicial reform. The component would include the introduction of programs for improved training of judges and their administrative and support staff, as well as legal practitioners. It would also encompass managerial training for Justice Ministry and court administrative staff, and instruction in automation at different levels.

12. Institutional Development. This component would aim to modernize the judicial system’s main agencies. The component would focus on the modernization of contentious court operations and on developing the capacity of the Ministry of Justice, the major manager of the courts. Particular emphasis would be placed on achieving improved management of case assignment and development, reduction of backlogs, programming of hearings, as well as judges’ access to legal, jurisprudence and registry data. Consideration would also be given to improving the courts’ budget management. The Ministry of Justice’s capacity would be enhanced by the introduction of modern management techniques in the areas of financial management, strategic planning and information technology development.

13. The project would also facilitate, through the provision of consulting services, a review of measures that could enhance the legal environment for justice management itself (e.g., uniform administrative procedures, changes in court management) and for private sector development (e.g., related to property rights and collateralization).

Financing
14. Estimates of the cost of the project would be finalized during the pre-appraisal mission in April 1995. The total project cost has been preliminarily estimated by the Ministry of Justice at around US$60 million, out of which the Bank would provide a loan of US$40-45 million. Cofinancing with bilateral donors is also envisaged. USAID, which has provided technical assistance in the drafting of collateral legislation, has expressed interest in participating in the operation.

Implementation

15. The Ministry of Justice would coordinate the project through the operation of an implementation team. This team would be initially composed of three staff, the director of the project, the procurement specialist and a financial manager. In addition, the team would be supported by technical teams from the courts and other government agencies.

Sustainability

16. Poland’s judicial system must command and retain general acceptance in order to be sustainable, for which reasonable performance and equity have to be demonstrated. The proposed project would aim to help the judiciary move in the direction of fully meeting this standard; its scope would be limited to what is appropriate and practical in a first operation of this type. The operation would be largely confined to adapting existing and proven practices thus providing a relatively secure basis for successful execution. In addition, the strong impetus for private sector expansion in Poland should provide concerted support for the recommended reforms. Project-directed efforts to inculcate strong participation by various legal community and other interested groups should also help sustain these changes.

Lessons Learned from Past Operations in the Country/Sector

17. Sector experience of the Bank, very recent in nature, indicates that these projects should be based on a broad framework. At the same time, it appears that initial activities should be carefully delimited and confined to what can be achieved in a short period (in order to produce early results for the operation’s credibility). Other lessons have been that, particularly with several institutional actors involved, there is need for continuous consensus-building.

Poverty Category

18. Not applicable.

Environmental Aspects

19. The proposed project has no explicit environmental aspects or effects, and therefore has been classified as Category “C.” The dispute resolution element however could facilitate the resolution of environmental conflicts.

Program Objective Categories
20. Improving the effectiveness of the judiciary would contribute to institution-building in the public sector, as well as development of the private sector.

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Note: This is information on an evolving project. Certain components may not necessarily be included in the final project.