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REPORT ON A MISSION BY

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CONSULTANT WITH UNIDO'S DEPARTMENT

FOR INDUSTRIAL PROMOTION

(MAURITIUS, MAY 24 - 29, 1987)

A. INTRODUCTION

This report contains the results of a mission on behalf of the UNIDO's Department for Industrial Promotion undertaken by the consultant in the period between May 24 and May 29, 1987 in Mauritius, on the occasion of the Regional Forum for Promotion of Industrial Investment Projects .

B. TERMS OF REFERENCE

The Consultant was attached to the UNIDO's Industrial Investment Division which was in charge of organizing the Regional Forum for Promotion of Industrial Investment Projects under the leadership of Mr. M.O. Abdelmoneim and of Mr. H. Maadi.

Consultant's main responsibility was to lecture on techniques of negotiation and to assist prospective partners in individual negotiations.

C. FINDINGS AND OBSERVATIONS

1. Description of the mission

Consultant arrived to Mauritius on Monday, May 25, 1987 at 16

lecture was held on Tuesday May. 26, 1987, at 16.30 hours and it lasted until 18.45 hours. The lecture itself lasted for about one hour and it was followed by a question and answer period of one hour and 45 minutes. On Wednesday, May 27 (all day) and on Thursday, May 28 (in the morning) Consultant assisted prospective partners in individual negotiations, and has actually helped to draft a few of the arrangements negotiated between the participants. On request of several participants Consultant also drafted a form of a Letter of Intent which many participants used in their negotiations.

2. Findings and observations

The idea of having a lawyer in attendance at meetings of this kind is a sound one. At such meetings many of prospective partners are not entirely sure whether they want to make a definite commitment at this stage, while they all want to establish a contact in writing. Some of the partners are more experienced in business dealings than the others, and some of the experienced partners do have an intention to obtain definite commitments from other partners. In such an atmosphere it is important to many participants to have someone whose objectivity cannot be doubted to advise them on the documents they intend to sign and the implications of such signatures. From many requests from participants directed to the Consultant to draft a form of a non-committal Letter of Intent it was obvious that quite a few partners had apprehensions in this respect.

The idea of having a consultant deliver a lecture to participants is also a sound one. The lecture was attended by about 70

Consultant delivered this time had two objectives in mind. On the one hand, the pre-contractual stage and its legal implications was described to participants, and on the other hand, there were outlined some of the pitfalls of investment and transfer of technology contracts.

Having in view that experience on the spot brings new ideas, and the fact that the Consultant was encouraged by responsible UNIDO officials to put his own impressions in writing, it is believed that the role of a consultant with legal orientation at future meetings of this type could be shaped with more direct objectives in mind. Consequently, please, find herein bellow certain suggestions and recommendations as to future participation of a legal oriented consultant at such meetings.

3. Findings and observations concerning the lecture

(i) The lecture which the Consultant was requested to deliver was entitled "Techniques of negotiation". This title would indicate that the lecture will be oriented either toward psychological aspects of negotiations or toward negotiating strategies, or maybe toward both of these aspects.

(ii) On the basis of discussions with several participants, what the participants really wished to hear and to be briefed about were the problems connected with negotiations which are taking place before the conclusion of a contract and the dangers of entering into a commitment before they really wish to do so. These were the immediate problems of many participants and their interest was directed primarily in this directions.

(iii) If future lectures are to be more oriented in the direction as described above under (ii), it is my opinion that a more adequate title for a lecture at such meetings could be "Negotiations and contracting". Such a title could be even more elaborated and the contents of such a lecture could be outlined in more details in some of the materials for the meeting. If such a more detailed description is given, it could contain some or all of the following topics:

- Legal systems in the World today and differences concerning formation of contracts
- Negotiations preceding the formation of a contract
- Can negotiations create obligations ?
- Documents preceding a contract:
 - Letters, cables, telexes, telefax messages;
 - Offers
 - Minutes of discussions
 - Letters of Intent
 - Letters of Understanding
 - Heads of Agreement
- Offers and acceptances
- Counter-offers
- Mistakes in contracting
- How can a contract be signed without entering into force?
- Conditions precedent and conditions subsequent
- Usual conditions for validity of contracts
- Agreements and contracts
- Various types of pre-investment and investment contracts:
 - contracts with brokers
 - contracts with agents, commission agents
 - contracts with consultants

contracts with banks

contracts with turn-key contractors

contracts with foreign investors

contracts with foreign licensors

- Importance of pre-feasibility and feasibility studies
- Liability of consultants, advisors, lawyers.

If special lectures on legal problems and pitfalls of joint venture agreements or transfer of technology contracts are thought to be needed at such gatherings, special time should be set aside for such lectures and special announcements to such effect should be made in the programme.

(iv) It is my opinion that the lecture on negotiating and contracting should be held the very first day of the Forum. First of all, it is important that the services of the lawyer are available from the very beginning of the meeting and this can be achieved only if the participants see the lawyer the very first day. In the second place, the subjects covered in the lecture are important from the very first day when the meetings start.

(4) Findings and observations concerning advisory services

(i) In the course of one and a half day during which time the Consultant was at the disposal of the participants in his advisory capacity, 12 participants from 7 countries visited the consultant in his office provided by the organizers. These participants had various questions of a legal nature, some of which were directly connected with the business at hand and some of which were related to other of their business problems. Quite a few participants

hours and at all other times when they had a chance to talk to him without making an appointment. It was therefore the Consultant's impression that it is important that the office of the legal consultant should be as close to the meeting area as possible and that the consultant is visible at all times to the participants.

(ii) Many participants have asked for various pre-contractual and contractual forms. The pressure for a form of a Letter of Intent was such that the Consultant could not resist it and had to make such a form. Several participants have asked for a form of a contract with a broker (mediator), with agents and with consultants. Although elaboration of such forms is risky and should be avoided, nevertheless, organizers should make a research in order to find if such forms already exist with professional associations and maybe place at the disposal of participants a few of such forms.

D. RECOMMENDATIONS

Having in view the above findings and observations, Consultant is in a position to make the following recommendations for future meetings of this kind:

1. The lecture should change its title from "Workshop on techniques of negotiation" to "Negotiating and contracting";
2. A more detailed description of what shall be contained in the lecture should be indicated in the Programme of the gathering;

3. The lecture on the legal subject should be held the very first day of the gathering in order to give maximum opportunity to participants to avail themselves with the services of the consultant;

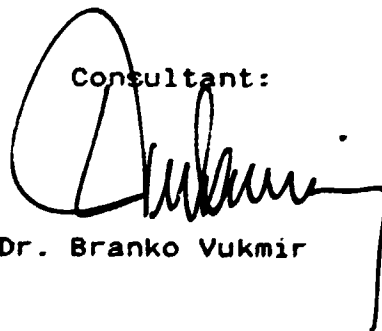
4. The office space of the legal consultant should be as close to the negotiating area as possible in order to make the lawyer easily accessible to the participants;

5. A few forms could be prepared for the use of participants before the meeting and handed out to the participants on their request. Provisions should be made in order to provide such forms which stem from professional associations and are already in use, and composition of forms by UNIDO should be avoided.

A complete listing of persons who approached the Consultant with certain problems, is contained in annex 1 to this Report.

Done in Zagreb, June 4, 1987.

Consultant:



Dr. Branko Vukmir

LETTER OF INTENT

This is to record the fact that the parties have met on May1987 in Mauritius on the occasion of the Regional Forum for Promotion of Industrial Investment Projects.

Both parties have expressed their interest and intent in further exploring a project inrelating to (description).....

.....
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.....

Within a period of two months from the date of this Letter of Intent both parties shall exchange further information concerning the above said project. Specifically, they shall do the following:

First Party:.....
.....
.....

Second Party:
.....
.....

After the exchange of information as described hereinabove, both parties shall decide on future steps to be undertaken.

If within two months from this Letter of Intent parties did not reach an agreement on future course of action, this letter of Intent shall cease to be expressing their intent to develop the above said project.

First Party

Second Party

Name:.....

.....

Address:.....
.....

.....
.....

Telex/Telephone

.....