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The Hesitant Privatization of Lithuanian Land

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William Valletta

Abstract

Three years after Lithuania's independence, the government and the Seimas are adopting fundamental laws and regulations that define the concepts of land ownership rights and land tenure and address the problems of real property administration and land use control. Their thinking has led to a progressive concept of land tenure in which owners' rights and responsibilities are carefully balanced in the fundamental law. Although it is too soon to tell whether, in practice, this balanced concept will lead to harmonious land relations and the efficient use of land, the experience of Lithuania is an important case study for analyzing the possibility of effective land privatization in the countries emerging from a Communist past.

ESSAY
THE HESITANT PRIVATIZATION OF
LITHUANIAN LAND

*William Valletta**

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INTRODUCTION

During its first days of independence, the Republic of Lithuania ("Lithuania") embarked on a program of land restitution and land reform in order to dismantle the discredited system of collective farms and urban housing estates, to restore to citizens

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their family farms and forest lands, and to allow ownership of residential and other urbanized land. In the first days of reform, however, there was no clear concept of the meaning of private property ownership: what were to be the rights and responsibilities of land owners, what would be the role of the state and local government in controlling the use and disposition of land, and how land transactions, financing, and land regulation and management were to be administered.

Now, three years after independence, the Lithuanian government and the Seimas¹ are adopting fundamental laws and regulations that define the concepts of land ownership rights and land tenure and address the problems of real property administration and land use control. The evolution of their thinking has led to a progressive concept of land tenure in which owners' rights and responsibilities are carefully balanced in the fundamental law. Although it is too soon to tell whether, in practice, this balanced concept will lead to harmonious land relations and the efficient use of land, the experience of Lithuania is an important case study for analyzing the possibility of effective land privatization in the countries emerging from a Communist past.

The Lithuanian experience with land reform is in many ways similar to that of the other Baltic and Eastern European states.² However, it has some unique features which offer both impediments and strengths to its efforts.

The fundamental laws that governed Lithuania during the Soviet period did not provide for any private ownership of land and were based on the concept that state ownership was the superior form of tenure for all forms of property.³ There were few

1. The Seimas is Lithuania's parliament.

2. See, e.g., UNITED NATIONS FOOD & AGRICULTURE ORGANIZATION, REORIENTING THE COOPERATIVE STRUCTURE IN SELECTED EASTERN EUROPEAN COUNTRIES: SUMMARY OF CASE STUDIES (1994) (discussing agricultural land programs in several Eastern European countries); Sigurd Grava, *The Urban Heritage of the Soviet Regime (The Case of Riga, Latvia)*, 59 J. AM. PLAN. ASS'N 1, 9 (1993) (discussing problems of urban land management); Aleksander Bohm, *Problemy Przestrzenne Miasta Postkomunistycznego*, 1 SWIAT NIERUCHOMOSCI 5 (Krakow 1992).

3. See LIETUVOS TARYBU SOCIALISTINHS RESPUBLIKOS CIVILINIS KODEKSAS [hereinafter CIVILINIS KODEKSAS] (Lith.) (1964) (amended 1983) (Civil Code in force in Lithuania in 1991, when Lithuania declared its independence from the Soviet Union). While several of its provisions relating to property rights were repealed in 1991, amendments dealing with land, real property, and other forms of ownership, usufruct, and lease were adopted by the Seimas on May 23, 1994. See CHERYL W. GRAY, EVOLVING LEGAL

circumstances in which individuals had responsibility to make decisions about the use or improvement of the land that they occupied or cultivated.⁴ The land registry and cadastre,⁵ which had been highly refined in the pre-war years of Lithuanian independence from 1919 to 1940, fell into disuse, and transactions involving land were non-existent. Deeds, contracts for sale, servitudes, and mortgages were all unknown, and the courts had no responsibility to adjudicate disputes involving land. Leases of buildings and living spaces were defined and permitted in the civil code, but these were conceptually understood as contractual obligations and could not involve land.⁶

On the positive side, Lithuania did possess the remembered experience of its pre-Second World War independent institutions⁷, thus, beginning its independence with a strong social consensus and fairly well-developed political institutions.⁸

I. *THE INITIAL LEGISLATION*

The centerpiece of the government's initial legislative program in 1991 was land restitution. Even before it adopted a constitution,⁹ the Lithuanian Supreme Council, precursor to the

FRAMEWORKS FOR PRIVATE SECTOR DEVELOPMENT IN CENTRAL AND EASTERN EUROPE (1993) (discussing evolution of property law in several other Eastern European countries).

4. CIVILINIS KODEKSAS §§ 296-365. The only right of exclusive occupancy and use of land was the family garden plot, which was given under a form of perpetual usufruct to individual families living in the countryside. This plot had been limited in size to .2 hectares, but had been increased to .3 hectares in the mid-1980's. *Id.*

5. A cadastre is a list of appraised property values used to determine tax assessments on that property.

6. *Id.*

7. UNITED NATIONS FOOD & AGRICULTURE ORGANIZATION, LAND REFORM IN LITHUANIA 1 (1992) [hereinafter LAND REFORM IN LITHUANIA] (report prepared by Benjamin Dubickas, former Director of Land Management, Lithuanian Ministry of Agriculture) (on file with the *Fordham International Law Journal*). During the inter-war period Lithuania had carried out a successful land redistribution program, which occurred fairly easily because the large 19th century agricultural estates had been held by gentry who had fled during World War I. *Id.* at 2-3. Land had been distributed to approximately 385,000 families in farmsteads averaging 15 hectares each. *Id.* at 7.

8. Walter Clemans, *Baltic Communism and Nationalism: Kto Kovo?*, in THE SOVIET EMPIRE: THE CHALLENGE OF NATIONAL AND DEMOCRATIC MOVEMENTS 95-122 (Uri Ra'anan ed., 1990).

9. See *World in Brief; Lithuania to Adopt New Constitution Declaring Independence*, ATLANTA J. CONST., Feb. 12, 1991, at C2 (stating that Lithuania's new constitution will describe the country as independent and democratic). An interim constitution was in force from February 11, 1991 until November 6, 1992, at which time the present Consti-

Seimas, adopted the Law on the Procedure and Conditions for Restitution of Ownership of Existing Real Property (the "Law on Restitution").¹⁰ This law was followed shortly afterward by the complementary Law on Land Reform.¹¹ Together, these acts established the administrative and policy framework within which citizens would become private owners and users of land. Soon after their adoption, the government set in motion the procedures under which citizens could claim their ancestral farmsteads, family homes, and other commercial and industrial properties that remained substantially unchanged since 1940. The two laws, however, left unresolved the key question of what private ownership and use of land would mean. Thus, until now, the restored landowners have been unsure of their rights and responsibilities and have been unable to engage in transactions such as sale, lease, or mortgage of land.

Several key features of the Law on Restitution and the Law on Land Reform have framed the debate over property rights. These features have shaped both the Lithuanian Constitution of 1992 (the "Constitution") and the passage of subsequent laws that define tenure, authorize transactions, and establish the administrative processes for obtaining land ownership and use rights. It is necessary, therefore, to talk about these early laws in some detail before a discussion of the recent legislation can be fully understood.

A. *The Law on Restitution*

The Law on Restitution embodies the central ideas of Lithuania's political and economic goals. It provides that those citi-

tution of the Republic of Lithuania took effect after affirmation by the national referendum of October 25, 1992. See Juliet O'Neill, *Cold and Complaining, Lithuanians Go to Polls; Constitution is Put Before Electorate*, MONTREAL GAZETTE, Oct. 26, 1992, at A6 (explaining that Lithuanian citizens voted in referendum to choose first Seimas to enact new constitution); Vlads Burbulis & Kazis Uscila, *New Constitution Ceremoniously Signed in Lithuania*, TASS, Nov. 6, 1992 (stating that new constitution was enacted).

10. Law on Restitution, 15 AGRARINES REFORMOS BIULETENIS 3 (1993) ("Istatymas del pilieciu nuosavybes teisiu i islikusi nekilnojamaji turta atstatymo tvarkos ir salygu"). The Law on Restitution was signed by the President on June 18, 1991 and took effect on August 1, 1991. *Id.* The law has been amended seven times, with the latest version adopted on July 15, 1993. *Id.*

11. Law on Land Reform, 15 AGRARINES REFORMOS BIULETENIS 18 (1993) ("Istatymas zemes reformos"). The Law on Land Reform was signed by the President on July 25, 1991 and took effect on September 1, 1991. *Id.* The law has been amended four times, with the latest version adopted on July 15, 1993. *Id.*

zens and their descendents whose land and buildings were confiscated by Soviet authorities in the post-war years, may reclaim their land and buildings.¹² Real property subject to restitution includes agricultural and forest land, independent homes, residential buildings, commercial and industrial buildings, and reasonably sized plots of land surrounding residential, commercial, and industrial buildings.¹³ When claims cannot be fulfilled because the land or buildings have been substantially altered since 1940,¹⁴ citizens may receive alternative property of equivalent value and type, monetary compensation, or shares that may be

12. Article two of the Law on Restitution provides:

The right of ownership to existing real property shall be restored: (1) to the former owner of the property, provided that he is a certified citizen of the Republic of Lithuania and is a permanent resident . . .; (2) to the children (or adopted children), parents (or foster parents), or the spouse of the former owner in the event he is no longer living. Upon the death of a child of the former owner, the right of ownership to his portion of the existing real property shall be restored to his spouse and children, provided they are certified citizens of the Republic . . . and are permanent residents.

Law on Restitution, art. 2.

13. Article two of the Law on Restitution provides:

Ownership rights to the following existing real property shall be restored to persons specified in Article 2 of this law: (1) land; (2) forests; (3) structures used for economic and commercial purposes together with their equipment; (4) residential houses together with their equipment.

Id.; see Government Decree No. 470 of Nov. 15, 1991 (amended May 17, 1993), 14 *AGRARINES REFORMOS BIULETENIS* 12 (1993) (containing detailed definitions of types of land, buildings, and equipment that may be restored) ("Lietuvos Respublikos istatymo Del pilieciu nuosavybes teisiu i islikusi nekilnojamaji turta atstatymo tvarkos ir salygu igyvandinimo").

14. Article one of the Law on Restitution states:

[O]wnership shall be restored: (1) by giving over either the actual property, or the equivalent of such property; or (2) in the event that it is impossible to grant the actual property or the equivalent of such property, or if the former owner does not desire the actual property, by financially compensating the persons specified in Article 2 of this law thereby enabling them to purchase an appropriate amount of state (public) property subject to privatization.

Law on Restitution, art. 1. The Law on Restitution contains several articles setting the standards for determining when properties are to be retained by the state or allocated to other owners with equivalent property or compensation offered to the ancestral owner. Article 12 states that land will be retained: if it is occupied by state institutions (airports, etc.) or newly created bodies of water; if it has been divided into garden plots; if it has been allotted to another farmer and is the site of his home or other farm buildings; if it is to be developed for urban expansion; or if it contains mineral deposits. *Id.* art. 12. Under Article 14, a residential building will be retained if it has been transformed to institutional uses, or if it has been significantly expanded. *Id.* art. 14.

traded for other property.¹⁵

The restitution program includes three significant features which are different from the privatization approach taken by several other Eastern European nations. First, the Law on Restitution limits claims only to citizens who are resident in the republic.¹⁶ This limitation has been included in Article 47 of the Constitution, which states that only citizens may own land.¹⁷ Lithuania has chosen not to extend its property restitution program to expatriates, and thereby has foregone a potential inflow of foreign capital for land improvement.¹⁸ Similarly, because Lithuanian citizens can only be natural persons, Lithuania has made it more difficult for corporate and cooperative entities to control land. This presents another hindrance to the availability of capital for economic growth and the improvement of land.¹⁹

Second, the Law on Restitution limits the size of land holdings that may be restituted. The maximum size parcel of farmland is eighty hectares, which can include no more than fifty hectares of cropland and no more than ten hectares of forest.²⁰ In practical terms, this is not a significant limitation because few

15. *Id.* art. 16. Article 16 of the Law on Restitution defines equivalent compensation as:

(1) giving the owner, free of charge, rights to different property of the same type or value; (2) reimbursing the owner by allotting shares; (3) making void financial liabilities of a citizen to the state which were incurred after the appropriation of real property.

Id. art. 16; see Government Decree no. 470, *supra* note 13, at 38-40 (detailing availability and procedure for receiving alternative compensation).

16. Law on Restitution, art. 2. An exception is made for those persons who were forcibly deprived of their citizenship by deportation or exile and who choose now to return to Lithuania. Supreme Council Decree No. 21 of July 16 1991, 1 AGRARINES REFORMOS BIULETENIS 35 (1992); Government Decree No. 470, *supra* note 13, at 13.

17. See CONST. OF THE REPUBLIC OF LITHUANIA OF OCTOBER 25, 1992 art. 47 (stating that "[l]and, internal waters, forests and parks may only belong to the citizens and the State of the Republic of Lithuania by right of ownership"). Foreign states may own land for consular and diplomatic purposes. *Id.* art. 47.

18. GRAY, *supra* note 3. By way of contrast, in the Czech Republic, emigres have been able to claim smaller scale residential and business properties that were confiscated between 1955 and 1961. *Id.* at 47. Farmland can only be restored to citizens. *Id.* In Hungary, foreigners may not own farmland but may own urbanized land with permission of the Ministry of Finance. It is reported that Hungarian expatriates can obtain this permission easily. *Id.* at 65.

19. CIVILINIS KODEKSAS § 95. Land may be held by legal persons, such as corporations, agricultural companies, cooperatives, and other enterprises only by lease. *Id.* Legal persons and foreign nationals are not prohibited from owning buildings and other immovable property separately from the land. *Id.*

20. Law on Restitution, arts. 4, 6.

persons owned such large parcels prior to 1940 and most of the claims for restitution involve plots of fifteen hectares or less.²¹ The purpose of the limitation is to create a system of family farms and to maximize the number of people who can be settled in rural areas.²² It has been recognized that for many types of crops and livestock production, these farms are not of sufficient size for modern technological farming. It is also recognized, however, that for the present, neither the farmers nor any existing national institutions are capable of investing in modern agricultural equipment. Thus, farms that are manageable at low levels of technology appear to be the best way to sustain current production and set the stage for modest growth through voluntary cooperative and consolidation arrangements.²³

Third, the Law on Restitution limits the return of agricultural land to citizens who are ready and able to farm or who are prepared to lease it for farm purposes.²⁴ These provisions are

21. LAND REFORM IN LITHUANIA, *supra* note 7, at 7. It is estimated that between the wars, the average land holding of a farm family was 15 hectares. *Id.* Statistics indicate the following pattern of agricultural holdings in 1939:

Farms over 50 ha.	16 percent of total area
Farms of 30-49 ha.	18 percent
Farms of 10-29 ha.	49 percent
Farms of less than 10 ha.	17 percent

Id.

22. *Id.* Benjamin Dubickas, former Director of Land Management for the Lithuanian Ministry of Agriculture, reports that the Ministry of Agriculture had a lot of discussions on the size of the farm. Everybody agreed with the advantages of a big modern farm but on the other hand the problem was if there is enough of [sic] land [to provide for] everyone wishing to establish a farm. After long discussion the solution was reached that the size of the land plot during the reform should not exceed 50 ha.

Id. at 6.

23. UNITED NATIONS FOOD & AGRICULTURE ORGANIZATION, THE DYNAMICS OF AGRARIAN STRUCTURES IN EUROPE, WORLD CONFERENCE ON AGRARIAN REFORM AND RURAL DEVELOPMENT (1988). The strategy is foreseen as a mirror of the experience of several Western European nations, which redistributed land and rationalized titles after World War II. These states began with programs to settle many families on low technology farms and allowed an evolution of farm size increases through cooperative investments over the years. *Id.*

24. Article four of the Law on Restitution provides that

[o]wnership of land allotted for farm use may be granted: to persons who are farmers; to members of farm cooperatives or farm companies; to persons who have provided for the active use of the land . . . and to persons who upon receiving the land, will lease it to better-qualified agricultural legal or physical persons.

Law on Restitution, art. 4(5)-(6); *see* Government Decree No. 935 of Dec. 9, 1992, 12 AGRARINES REFORMOS BIULETENIS 26 (1993) (concerning verification of the qualification

intended to ensure that agricultural production is not further disrupted because the land is idle. They are also seen as an incentive for the new owners to retain the skilled people who are presently working the land.²⁵ If farming use is not maintained or established within two years after restitution of the land, then the Law on Restitution provides that the State shall reacquire the parcel and sell or grant it to a farm family which will keep it in active use.²⁶

These limitations appear to be the result of policies that view land as a national "patrimony" and that seek to avoid privatization and development that will enrich individual interests at the expense of the citizenry. They also reflect the view that land reform and restitution are programs closely related to the agricultural sector and separate from the privatization of industrial and commercial activities.²⁷

The program of property restitution has a strong theoretical basis. It has been described as a process designed to restore natural rights and central to reestablish a society ruled by law.²⁸ Property ownership, along with personal freedom, has been de-

of farmers ("del ukininkavimo ziniu minimino patrikrinimo ukininku kvalifikacijos kelimo bei fiziniu ir juridiniu asmenu"); Order of the Minister of Agriculture No. 819 of July 20, 1993, 17 AGRARINES REFORMOS BIULETENIS 45 (1993) (concerning preparation of documents for the ownership of land by persons who grant the lease of their farm to better qualified physical or legal persons ("del dokumentu rengimo tvarka atstatant nuosavybes teise i zeme asmenims, kurie susigradzinta zeme isnuomos kitiems zemes ukio besiverciantiems fiziniams ir juridiniams asmenims"))).

25. Pranas Vitkevicius, *Nuosavybes Socialine Funkcija ir Humanizmas Igyvendinant Ekonomine Reforma Lietuvoje*, in LIETUVOS VALSTYBINGUMO TEISINES PROBLEMAS 49-51 (1993). Many of the former owners entitled to restitution are elderly and can no longer actively farm. *Id.* Other claimants are the children and grandchildren of former owners who now live in towns and cities. *Id.* Meanwhile, much of the land that is eligible for restitution is occupied and worked by active farm laborers who have no claims for ancestral land. *Id.* The provisions are intended to provide an orderly transition by allowing the active farm workers to continue on the land for a number of years until the land reform process advances and these persons can be provided with their own farms. *Id.*

26. Law on Restitution, art. 4(16). The Law on Restitution states that land shall be reacquired by the Lithuanian government at the established price and by the established procedure from persons to whom farmland has been restituted, who fail to make use of it in accordance with its farm purpose for two years, and it shall be sold or leased . . . (to other persons who will actively farm it).

Id.

27. Algirdas Semeta, *Lithuania's Road to Private Property*, BALTIC NEWS, May 1992, at 8.

28. Elemantus Grakauskas, *Legal Basis for Agrarian Reform*, BALTIC NEWS, May 1992, at 1992.

scribed as the primary means for restoring civil order in addition to restoring economic order.²⁹ Lithuanian officials frequently cite to the papal encyclical, *Rerum Novarum*, and its modern update, *Centesimus Annus*, as fundamental policy statements that guide the process of restoring property rights. These documents present the theme of private property as a natural law right:

Private property or some ownership of external goods affords each person the scope needed for personal and family autonomy, and should be regarded as an extension of human freedom . . . Of its nature private property also has a social function which is based on the law of the common purpose of goods.³⁰

A land tenure system, therefore, which is intended to achieve family autonomy and the social function of property is the ideal for Lithuanian planners, lawyers, and political leaders.³¹

Lithuania's officials clearly understand that they are accepting a less aggressive program of capital formation and potentially less productive agriculture, but they believe that this is necessary both to ensure that historical wrongs are rectified and to ensure that as many families as possible will have a fair stake in the land resources of the nation.

B. *The Law on Land Reform*

The Law on Land Reform reinforces the policies inherent in the Law on Restitution and acts to soften some of its problematic features. It overlaps the Law on Restitution in providing for the management of all lands, including those privatized by restitution, and it defines the regime by which control of all other lands will be allocated. These other lands include parcels needed for public facilities; lands which are to be preserved in their natural state to protect environmental, historic, archaeological, or other features; and lands for which no claims have been made or can be proven. Thus, the purpose of the Law on Land Reform is to ensure that restitution and the parallel process of disposition of other lands will result in a rational system

29. A. Taminskas, *Nuosavybes Teises Rusys ir Formos*, in *LIETUVOS VALSTYBINGUMO TEISINES PROBLEMAS* 51 (Vilnius 1993).

30. JOHN PAUL II, *CENTESIMUS ANNUS* 30 (quoting *GAUDIAM ET SPES*, ¶¶ 69, 71 (Second Vatican Council Pastoral Constitution on the Church in the Modern World)).

31. Vitkevicius, *supra* note 25, at 49-51.

of land management, consistent with economic efficiency, environmental protection, effective spatial planning, and other societal needs.³²

The Law on Land Reform envisions that all land in the republic will fall into three categories:³³

1. land retained in exclusive state ownership for public facilities, parks, underground resource exploitation and natural preservation;
2. land restituted to private ownership;
3. all other (residual) lands.

The final category of residual lands is the State Land Fund. From the State Land Fund, parcels are to be made available for grant without payment to certain classes of citizens.³⁴ Parcels will be available for sale or lease to other citizens separate from any claims for restitution. In addition, the State Land Fund will lease land to agricultural companies, cooperatives, other commercial and industrial entities, and citizens for housing.³⁵

The Law on Land Reform authorizes the elected councils of the forty-four rural and eleven urban districts of the republic to make decisions regarding individual parcels of land. Each rural council is assisted by an Agrarian Reform Service consisting of land management, surveying, and other technicians who process restitution applications and all other requests for purchase or lease of land. Their work is coordinated by the Agrarian Reform Commission of the office of the Prime Minister and by the Minis-

32. The Law on Land Reform, 15 AGRARINES REFORMOS BIULETENIS 18, art. 2. The Law on Land Reform states:

[T]he goals of land reform are: to implement the right of Lithuanian citizens to land ownership and land use by returning the expropriated land in accordance with the procedures and terms established by law, as well as by selling or leasing state-owned land; to form land holdings suitable for efficient farming; and to create the legal and organizational preconditions for utilizing, managing and disposing of private lands under the conditions of a market economy.

Id. art. 2.

33. *Id.* arts. 5, 13, 14.

34. *Id.* art. 6. The Law on Land Reform provides equivalent land parcels for three categories of people: (1) citizens resettled in Lithuania whose families owned land in Poland or the Kaliningrad region of Russia; (2) persons whose ancestral lands have been urbanized and changed so that they cannot be returned; and (3) persons who have been displaced from their homes by the restitution of those houses to their former owners. *Id.* Such persons receive land on which to construct a new house. *Id.*

35. The system appears to contemplate that land for multi-family housing will continue to be state owned and only the right of occupancy will be made available to individuals by lease. Joint and common ownership will be discussed below.

try of Agriculture.³⁶ Urban district councils are assisted by a parallel structure of land reform services.³⁷

Each rural district and its constituent subdistricts³⁸ is expected to prepare a land reform plan based upon considerations of efficient farming, environmental protection, and the provision of convenient housing and services for the rural population. The plan is to guide all decisions on the disposition of lands in the district or subdistrict.³⁹

The Law on Land Reform is intended to solve some of the shortcomings inherent in the land restitution program. First, it allows farm owners who have received inefficiently small parcels to increase their holdings by purchase or lease of adjoining land.⁴⁰ Second, it allows rural families who have no ancestral claims to obtain their own farms, thereby ensuring that they remain part of the agricultural work force.⁴¹ The eighty hectare limit applies to these transactions.⁴² Third, the Law on Land Reform includes a priority list of claimants, in order to resolve disputes where there are multiple applicants for the same land parcels.⁴³

36. Law on Land Reform, art. 17. The procedure and standards governing the work of these councils is spelled out in Government Decree No. 420 of Oct. 12, 1991, 13 *AGRARINES REFORMOS BIULETENIS* 51 (1993) (local agrarian reform service regulations ("Aplynkiu Agrarines Reformos Tarnybu Nuostatai")). Technical assistance for planning, surveying, land management and other administrative tasks is provided by the Ministry of Agriculture and several quasi-governmental enterprises including the Institutes of Geodesy, Surveyors, and Land Utilization. *Id.*

37. The land reform services are under the supervision of the Ministry of Agriculture, which works in conjunction with the Ministry of Construction and Urbanization.

38. The rural subdistricts correspond geographically and organizationally to the former collective farms. There are subdistricts in the 44 districts of the republic.

39. Law on Land Reform, arts. 20-22.

40. *Id.* art. 10(3). The Law on Land Reform states that "[l]andowners shall have the right to purchase, without submitting competitive bids, State-owned land and forest plots adjoining their property, provided that such plots are not suitable for use by other natural or legal persons." *Id.* Article 8(5) provides for the sale of up to 10 hectares of forest to adjoining farmland owners. *Id.* art. 8(5).

41. *Id.* art. 8(2). The Law on Land Reform provides

[f]or the establishment of a farmer's farm, land shall be sold to persons who are prepared to farm. A person's preparation to engage in farming shall be assessed by the district board in accordance with the procedure established by the Ministry of Agriculture.

Id.

42. *Id.* art. 9.

43. *Id.* art. 10. There are 11 separate categories of claimants. *Id.* Highest priority is given to those who have the right to ancestral lands under the Law on Restitution, then to those who have the right to receive equivalent land, then to political prisoners

The law provides that city, town, and village residents may acquire the land on which their houses stand and purchase garden plots.⁴⁴ Citizens who wish to carry out various commercial and industrial activities may purchase land and buildings for these activities.⁴⁵

By allowing the State Land Fund parcels to be disposed of by lease, the Law on Land Reform provides the method by which corporations, agricultural companies, cooperatives, and other domestic and foreign judicial persons may obtain land.⁴⁶ The constitutional limitation of land ownership to citizens does not apply to these lesser forms of tenure.

Sale of agricultural land must take place by competitive bid. However, persons who wish to enlarge their existing farm parcels may gain adjacent land by negotiated sale, and persons with a special knowledge of forest management can obtain forest land without competitive bid.⁴⁷

The Law on Land Reform makes clear that in all transactions, land is acquired subject to restrictions and limitations imposed for the purposes of environmental protection, natural re-

and deportees who are returning to Lithuania, then to local residents who have no restitution claims and finally to other citizens. *Id.*

44. *Id.* art. 8(6). The size of individual house lots is limited to a maximum of .2 ha. in Vilnius and other major cities and .3 ha. in smaller towns. *Id.* art. 9(5). Rural village and town residents who do not receive a full farmstead are entitled to purchase a family garden plot of 2 to 3 ha. *Id.* art. 9(2). Other town and city dwellers can purchase plots of .12 ha. as members of garden societies. *Id.* art. 9(6); see Government Decree No. 816 of Oct. 29, 1993, 17 AGRARINES REFORMOS BIULETENIS 19 (1993) (concerning the procedures for grants of land plots for farmers and garden plots ("del zemes sklypu asmeniniam ukiui bei tarnybinems partvirtinimo")).

45. Law on Land Reform, art. 6(3); see Regulations adopted pursuant to Government Decree No. 89 of Feb. 7, 1992, 6 AGRARINES REFORMOS BIULETENIS 31 (1992) (concerning auction of land parcels for non-farming uses ("del zemes sklypu ne zemes ukio veiklai aukciony nuostatai")).

46. Law on Land Reform, art. 15; see Decree No. 89 of Feb. 7, 1992, 6 AGRARINES REFORMOS BIULETENIS 8 (1992) (concerning the procedure for the transfer and lease of land parcels for non-agricultural activity and for garden plots ("del zemes sklypu ne zemes ukio veiklai bei sodininku bendriju nariu sodu sklypu pardavimo ir nuomos tvarkos")).

47. Law on Land Reform, art. 10(3)-(4); see Decree No. 344 of May 12, 1992, 8 AGRARINES REFORMOS BIULETENIS 33 (1992) (concerning procedure for calculating, paying, and registering the compensation to state, and procedures for settling accounts for sale of land, forest, and water resources in countryside ("del kompensaciju uz valstybes isperkama zeme ir miska bei atsiskaitymo su valstybe uz isperkama kaimo vietoveje zeme, miska ir vandens telkinius apskaiciavimo, ismokiamo ir apskaitos tvarkos patvirtinimo")).

source protection, historic preservation and appropriate spatial planning.⁴⁸ These restrictions are based on the land utilization plans for the area, as well as other laws.⁴⁹ Each parcel of land is assigned a main objective of land use, or *pagrindas tikslinas zemes naudojimo paskirtis*, which fixes its agricultural, forest, economic, or residential character. No change may be made in the classification of a parcel of land without permission from the district council.⁵⁰ An owner who disregards the land use restriction "shall be held materially responsible under the laws of the Republic."⁵¹ If violations occur, the Law on Land Reform states that the land can be appropriated back to the State Land Fund and the owner paid the "total value" of the land.⁵² There is some lack of clarity on the application of this re-appropriation provision because a similar clause was removed from the Law on Land prior to its adoption in March, 1994.

II. *THE PROGRESS OF LAND RESTITUTION AND REFORM*

Despite the lack of additional laws defining land tenure and real property transactions, the Lithuanian government in 1991 began accepting and processing claims for the restitution of land and buildings, and began preparatory work on land reform. Its goal was to achieve adjudication of all restitution claims in a period of five years.⁵³ By the end of 1993, approximately 118,000 parcels of agricultural and forest land were restituted out of a total of 450,000 filed claims.⁵⁴ It has also been estimated that over seventy percent of the eligible residential properties in urban areas have been restituted.⁵⁵ Furthermore, it is expected

48. Law on Land Reform, art. 11.

49. See Law on Protected Territories ("*Istatymas Saugumo Teritoriu*") (Nov. 9, 1993) (providing restrictions on the use of land in eight different types of regions, including areas of national and regional parks, other nature and forest reserves, lands above major groundwater aquifers, and limestone ("karst") deposits, and lands surrounding surface water reservoirs, streams, and rivers) (on file with the *Fordham International Law Journal*).

50. Law on Land Reform, art. 11(2).

51. *Id.* art. 12(3).

52. *Id.*

53. LAND REFORM IN LITHUANIA, *supra* note 7, at 5.

54. BALTIC OBSERVER, Feb. 1994, at 3 (quoting Mykolas Pronskus, Chair of the Seimas Committee on Agriculture).

55. S. Naujalis, Director of the Lithuanian Division of Architecture and Landscape, Ministry of Construction and Urban Affairs.

that 2.5 million parcels of land will exist in Lithuania upon the completion of the land restitution and reform.

A. Administration of Claims

The process of adjudicating agricultural land claims involves a three-level administrative structure, including the Ministry of Agriculture, the district authorities, and local subdistrict authorities.⁵⁶ Individual claims are filed by rural residents and others, who may qualify for the restitution of rural lands, in the offices of the Land Reform Service at the subdistrict level.⁵⁷

In making an application, the eligible landowner must assemble the documentary evidence to demonstrate the claim. Such evidence consists of material from the state archives from the 1919 to 1940 period, which demonstrates that the applicant or the applicant's parent or grandparent was the owner of a certain parcel of land. The documentation must show that the applicant is clearly descended from such owner and meets the other criteria for eligibility.⁵⁸ In the case of farmland, evidence

56. See Government Decree No. 470, 14 AGRARINES REFORMOS BIULETENIS 12 (1993) (presenting complete procedure concerning Implementation Process for Law on Restitution ("del Lietuvos Respublikos istatymo del pilieciu nuosavybes teisiu i islikusi nekilnojamaji turta atstatymo tvarkos ir salygu igyvendimo tvarka")).

57. *Id.* The filing is made in accordance with Government Decree No. 470. *Id.*; see Government Decree No. 525 of July 9, 1992, 9 AGRARINES REFORMOS BIULETENIS 20 (1993) (concerning further implementation of land reform and land surveying ("del tolesnio zemes reformos ir zemetvarkos projektavimo darbu vakdymo")). There is considerable criticism of the work of the subdistrict authorities, who usually consist of the same people who were managers of the former collective farms. There is some built-in bias against privatization and, in some cases, a desire on the part of these authorities to retain land and agricultural assets in their own hands. The process of restituting land has been accompanied by a process of distribution of the buildings, equipment, livestock, and other assets of the farms, as well as procedures by which new agricultural companies or agricultural cooperatives are created through the cooperative effort of the owners and farm workers. See Law on Agricultural Companies of April 16, 1991, 13 AGRARINES REFORMOS BIULETENIS 3 (1993) (governing the procedures on agricultural enterprises ("Istatymas Zemes Ukio Bendroviu")); Government Decree of October 12, 1991, 13 AGRARINES REFORMOS BIULETENIS 18 (1993) (concerning temporary order of reorganization of agricultural enterprise property privatization ("del zemes ukio imoniui turta privatizavimo bei ju reorganizavimo laikinosios tvarkos")).

58. Government Decree No. 470. Archival documents which are acceptable as proof of claims include deeds, mortgages, and other notary documents referring to land transactions, land registry, and cadastre entries. *Id.* Documents that may be used to support claims in the areas under Polish rule in the period 1919 to 1940 are detailed in Government Decree No. 349 of May 20, 1992. See Government Decree No. 349 of May 20, 1992, 14 AGRARINES REFORMOS BIULETENIS 47 (1993) (concerning certain documents confirming ownership rights in surviving real property ("del kai kuriu doku-

of eligibility must include proof that the applicant has been living and working in a rural area or is otherwise capable of ensuring that active farm use will continue.⁵⁹ Technical assistance to the subdistrict board in reviewing these documents, marking out the land in the field, and providing preliminary metes and bounds and other parcel descriptions is provided by the District Land Reform Service, the Ministry of Agriculture, and the State Surveying Institute.

In areas where archives have been destroyed, claimants can make application to the courts to establish their right to restitution by the testimony of witnesses and by other documentary evidence, which they may have in their own possession or have obtained from other sources.⁶⁰

After a review, the sub-district board renders an opinion on the validity of the claim and transfers the file to the district office where it is reviewed by the Privatization Commission with the assistance of the Land Reform Service. The staff gives its opinion to the district board, which has authority to render the final decision granting the claim. Before this decision is rendered, however, the file is transferred to the central Ministry of Agriculture legal office which reviews the documentation supporting the claim and signs off on its sufficiency, in light of pertinent decrees and court rulings. The file is then returned to the district office where the final decision of the board is executed, the required information is entered into the land-registry computer, and the certificate of title or *pazyma* is issued to the new owner.⁶¹

mentu patvirtinanciu nuosavybes teise i islikusi nekilnojamaji turta") and detailing documents which may be used to support claims in areas under Polish rule in period 1919 to 1940).

59. Government Decree No. 935 of Dec. 9, 1992, 12 *AGRARINES REFORMOS BIULETENIS* 26 (1993). This proof may consist either of proof that the claimant is qualified to conduct farm operations, or proof that the claimant has concluded a valid lease or other agreement with a qualified farmer or a farm company, which will work the land. *See id.* (concerning verification of the qualification of farmers ("del ukininkavimo ziniu minimumo patikrinimo, ukininku kvalifikacijos kelimo bei fiziniu ir juridiniu asmenu, besivercianciu zemes ukio veikla, konsultavimo sistemos sukurimo")); Order of the Minister of Agriculture No. 819, *supra* note 24 (concerning preparation of documents for ownership of land by persons who grant lease of their farm to better qualified physical or legal persons ("del dokumentu rengimo tvarka atstatant nuosavybes teise i zeme asmenims, kurie susigrazinta zeme isnuomos kitiems zemes ukio besiverciantiems fiziniams ir juridiniams asmenims"))).

60. S. Stazys, *Pilieciu Nuosavybes Teise i Islikusi Nekilnojamaji Turta Atstatymo Klausimai*, 2 *VERSLAS IR TEISE* 78 (1992).

61. Regulations of the State Land (with Elements of Real Property) Cadastre

All of the claims granted under this procedure are subject to later adjustment of the boundaries of the land parcel, because the initial field surveys are not completely accurate. The State Surveying Institute has undertaken a multi-year project to provide accurate surveys in all districts of the country.

The procedure for adjudicating claims for house lots and urban land parcels operates in a similar fashion, but the Ministry of Construction and Architecture works with the Ministry of Agriculture in assisting the eleven urban district boards.⁶² Claims for restitution of commercial or industrial real property are made to the specific ministry that controls the land and buildings in question.⁶³

B. *The Land Registry*

Accurate registry of all land parcels is an essential part of the private-land system, and Lithuania has succeeded in creating a cadastre and registry modeled after the German and Scandinavian systems.⁶⁴ Each land parcel is fully described in the land records, drawn accurately on the cadastre map, and given a unique index number. Once registered as a separate land parcel, all succeeding transactions involving the parcel are to be recorded, beginning with the first grant from the state to the private owner or user. The registry contains other pertinent facts regarding the physical and legal status of the land: its main objective of usage and other conditions and restrictions on its use; its level of development, including size and configuration of buildings and other infrastructure equipment; subsidiary rights such as leases, servitudes, and mortgages; its initial value (similar to an assessed value); and its market value when subsequent

(Lith.), art. 1.8. The final procedure of registry and issuance of the pazyma is carried out pursuant to Government Decree No. 316 of April 30, 1992. *Id.*

62. Law on Restitution, 15 AGRARINES REFORMOS BIULETENIS 18, art. 18(2) (1993); Government Decree No. 470, 14 AGRARINES REFORMOS BIULETENIS 12, arts. 41-57 (1993).

63. Law on Restitution, art. 18(3).

64. See UNITED NATIONS FOOD & AGRICULTURE ORGANIZATION, REPORT OF PRANAS ALEKNAVICIUS (July 1993) (explaining that hardware and software systems were created by Ministry of Agriculture and the State Geodesy Board in contracts with Swedsurvey and Norwegian Telemark Research Foundation); ORGANIZATION OF SURVEYING AND MAPPING IN THE FEDERAL REPUBLIC OF GERMANY, LECTURES FROM THE 32D DEUTSCHE VEREIN FÜR VERMESSUNGSWESEN SEMINAR FOR SURVEYORS OF ESTONIA, LATVIA AND LITHUANIA, RIGA (1993) (describing same).

transactions occur.⁶⁵

The land registry is a Torrens system, and the registry office is authorized to give at any time, upon request, a legally binding certificate of title whose accuracy is guaranteed by the state.⁶⁶

III. *LITHUANIAN LAW ON LAND*

The importance of land restitution and land reform has been reflected in the fact that these programs have gone forward in the absence of the fundamental laws defining the concept of ownership and the forms of land tenure. Recently, however, the Seimas has turned its attention to these issues and has adopted the fundamental Law on Land.⁶⁷ This law reiterates the overall structure of ownership in the republic, as outlined in the Law on Land Reform: exclusive state-owned land for public facilities; privately-owned land; and the State Land Fund lands available for private purchase, lease, or other temporary use.⁶⁸

A. *Forms of Tenure*

1. Ownership (*Nuosavybes Teise*)

The right of ownership, *nuosavybes teise*, is defined as the full

65. Regulations of the State Land (with Elements of Real Property) Cadastre, art. 32. These regulations state:

Data on the below-mentioned subjects are recorded in the data register of the state land cadastre:

- 32.1. area, location, land user's ownership of the land parcel;
- 32.2. economic character, terms of land use and land leasehold;
- 32.3. structure and productive capacity of farm lands, ameliorative condition of the land parcel;
- 32.4. limitations on land use and servitudes;
- 32.5. monetary valuation of the land and real property (buildings, fixtures, etc.);
- 32.6. mortgages on the land and real property;
- 32.7. registration of the original records of ownership and any changes in ownership of farming lands and other changes in cadastral indices.

Id.

66. *Id.* art. 1.4. Article 1.4(3) states: "the data register of the State land cadastre is a juridical document proving the landowner's right to property or use." *Id.* art. 1.4(3). The decree requires the registration of every land transaction within one month of the transaction date. Failure to register such transaction renders it "judicially void." *Id.* art. 1.4(2).

67. The Law on Land (not yet reported) was adopted by the Seimas on March 15, 1994, and the majority of its provisions took effect on July 1, 1994.

68. *See supra* note 11 and accompanying text (discussing regulatory framework for land privatization).

authority "to manage the owned land and dispose of it without violating the laws of the Republic or the rights or legitimate interests of other persons."⁶⁹ Ownership is further defined in two sections of the law, which set forth the rights and responsibilities of owners. Rights are those normally associated with the concepts of "fee ownership" and "proprietor" in countries which follow the English and French traditions, including the rights:

- to dispose of the land or lesser rights of occupancy and use by sale, bequest, gift, exchange, lease, temporary use right and mortgage;
- to occupy and use the land for the owner's purposes (in accordance with the laws governing land use and management) and to retain or dispose of the profits from such use;
- to seek from the government all pertinent protections of the ownership rights and, when appropriate, to seek permission to make changes in the restrictions and conditions imposed upon the use of the land.⁷⁰

Unlike those countries that follow the Roman law concept of land ownership, Lithuania defines "land" more narrowly. It includes only the surface of the earth and a reasonable layer of air above it.⁷¹ The subsurface is not defined as part of a land parcel. Instead, the State is understood to own all sub-surface minerals and water resources. The State also retains the right, upon privatization of the surface, to allow reentry for mining, other exploitation, and activities to protect these resources. It is implied in the law, but not stated, that the surface owner has the right to make use of a reasonable depth of soil for building foundations and roots of crops and trees. It is also expressly stated that a farmer may take for personal use, but not for sale, underground water and minerals, except amber, oil, gas, and quartz. Commercial exploitation of any subsurface resources is to be carried out only by license from the proper government ministry.⁷²

The sections of the law defining the rights of owners and users is balanced by two sections defining the obligations of own-

69. Law on Land, art. 3 (1994) (on file with the *Fordham International Law Journal*).

70. Law on Land, art. 7. Further rights are defined more generally for all users of land, including owners, lessees, and holders of rights of usufruct ("zemes naudotoju teises"). *Id.* art. 8.

71. *See id.* art. 2 (defining land ("zemes")).

72. *Id.* art. 7.

ers and users.⁷³ These include the responsibility to conform to land use and environmental regulations, restrictions, and conditions that are imposed to protect the quality of the land and the other natural systems of which it is a part. They also include responsibilities to make rational use of the land in accordance with spatial plans; to refrain from any use which will violate the rights of neighboring land owners and users; and to allow access to the land for agencies of the government which are conducting surveys, scientific exploration, and other geographical or topographical work.

The Lithuanians view environmental and other social obligations as inherent elements of the land title, not as systems of governmental regulation imposed from outside (as in the United States and several other Western legal systems). Thus, a key feature of the land registry is the inclusion, in the description of each land parcel, of the pertinent conditions and restrictions on use. These include the main objective of land use and the special conditions and restrictions derived from the planning programs of the various environmental and land management agencies.⁷⁴ They are imposed in the initial process of creating the land parcel when granting private ownership or use. The conditions, restrictions, and main objective may be understood to "run with the land," and all subsequent purchasers, lessees, and users must agree to take the land subject to them.

In concept, therefore, no land ownership, except that of the State, is absolute. The failure of an owner to adhere to the restrictions and conditions placed upon land ownership could cloud the validity and marketability of the title. The practical implications of this conceptual structure are not clear. In earlier drafts of the Law on Land, the government was given the authority to revoke title and reacquire land parcels into the State Land Fund if conditions and restrictions were violated and the land was not put to active use. These provisions were removed, partly

73. *Id.* arts. 9, 10.

74. Law on Protected Territories; Regulations of the State Land Cadastre, art. 32. In particular, conditions and restrictions are defined pursuant to the Law on Protected Territories. Article five of the Law on Land sets forth the categories from which the main objective of land use for each parcel is to be derived: (1) farming land, (2) forest land, (3) conservation land, and (4) land for other uses (commercial, industrial, housing). Law on Land, art. 5. A future Law on Territorial Planning will define in greater detail the standards and procedures for determining and changing the main objective of land use and the various conditions and restrictions.

because it was recognized that they would create uncertainty and would hinder the ability to mortgage land, and partly because they are inconsistent with the concept of the "inviolability" of private property as expressed in Article 23 of the Constitution.⁷⁵

In practice, it is expected that disputes between private landowners and the government agencies over non-adherence to conditions and restrictions will be adjudicated as criminal and civil violations without effect on land title.⁷⁶ However, land transactions may be significantly affected when the seller is in violation of the recorded conditions and restrictions.

2. Usufruct (*Zemenauda*)

It is unclear whether a second form of land tenure, the long term or perpetual right of use, will be recognized under the Law on Land. Early drafts of the law contained express provisions for this type of tenure, particularly to facilitate the manner in which the State Land Fund would make land available for legal persons to hold. This concept has been carried over from Soviet law and is included in the land codes of several other former Eastern bloc states.⁷⁷ This form of tenure is implied in the Law on Land Reform. However, it was expressly removed from the Law on Land before its adoption, and the word "lease" was included in those places where the disposition of State Land Fund parcels is described.

Article 22 of the Law on Land provides generally that state land may be acquired by "institutions and organizations, maintained from the budget, for either a fixed period or an unlimited time."⁷⁸ The same article also provides that "for forest en-

75. CONST. OF THE REPUBLIC OF LITHUANIAN OF OCTOBER 25, 1992 art. 23. Article 23 reads, in part, "Property shall be inviolable. The rights of ownership shall be protected by law." *Id.*; see *The Editor's Column: The Problem of Inviolability of Property* ("Nuosavybes Nelieciamumo Problema"), 2 TEISES PROBLEMAS 5 (1993) (discussing how this concept has been applied by courts).

76. See LIETUVOS RESPUBLIKOS ADMINISTRACINIŲ TEISES PAZEIDIMŲ KODEKSAS (Lith.) §§ 45-48, 101-07 (1993) (explaining that existing Code of Administrative Violations contains civil sanctions for violators of certain land use restrictions, of construction codes, and of other requirements for permits to use land and natural resources).

77. See RZECZPOSPOLITA POLSKA KODEKS CYWILNY (Pol.), art. 232 (1964) (defining *użytkowanie wieczyste* as 99-year right of use which is acquired from state or municipal government); see also Law Concerning the Forms of Land Ownership, of January 30, 1992 (Ukr.), reprinted in, 2 RUSSIA & THE REPUBLICS LEGAL MATERIALS 5 (John Hazard & Vratslav Pechota eds., 1992).

78. Law on Land, art. 22.

terprises and for national and regional parks⁷⁹ state land may be acquired for use by following a procedure to be defined by the government.⁸⁰ Article 24 provides that institutions and enterprises may take land for use by agreement with a municipal or regional government. Size limits of one hectare in a city or residential development and of ten hectares in the countryside are set by Article 22.⁸¹ The only provision regarding private land that may give rise to usufruct is Article 7, paragraph 1(1), which states that, among other forms of disposition, a private owner may "give permission for temporal use of [the land parcel] to other natural persons and legal entities."⁸² This provision appears to imply that the usufruct will be the form of tenure by which the state will grant lands to various commercial and industrial entities, foreign persons and enterprises, agricultural companies, and multi-family housing organizations, all of which are constitutionally prohibited from owning land.

3. The Lease (*Naumojimo*)

The lease (*naumojimo*) is mentioned in two sections of the Law on Land. These sections extend to private owners the ability to lease all or part of their land to other private parties.⁸³ The law also authorizes municipal and regional governments to lease land to individuals in parcels not exceeding three hectares of farmland and .3 hectares of land for other uses.⁸⁴

The fundamental definition of a lease applicable to land and the details for its creation and function are contained in a separate Law on Lease of Land.⁸⁵ The Law on Land and Law on Lease of Land appear to change the nature of the lease which, under the existing civil code, was considered to be a contract, not a form of real property tenure. Both laws require any lease of land of more than three years to be recorded in the land registry and the lease agreement to contain all the pertinent cadastral data defining the parcel, its servitudes, and restrictions and

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* art. 7, ¶ 1(1).

83. *See id.* art. 7, ¶ 1 (granting to private owners the right to lease their land to others); *id.* art. 15, ¶ 1 (recognizing lease as form of land transaction).

84. *Id.* art. 24, ¶ 2(2).

85. Law on Lease of Land ("Zemes Nuomos Istatymas") (Dec. 1993) (on file with the *Fordham International Law Journal*).

conditions on use.⁸⁶

4. Common Ownership (*Bendrosios Nuosavybes Teise*)

Two forms of common ownership (*bendrosios nuosavybes teise*) are provided for in the Law on Land.⁸⁷ Common shared ownership (*bendrosios daline nuosavybe*) may be held by two or more citizens or by one or more citizens and the state. This form allows multiple ownership in the same land parcel with the individual owners having equal or varying shares of the rights and responsibilities. These may be divided geographically, with areas of separate and common control marked in the cadastral maps. They may also be divided as varying proportional shares of the value of the land or of other attributes of its use and profitability.⁸⁸

Common joint ownership (*bendrosios jungtines nuosavybes*) allows individual citizens to share undivided rights in the land parcel as a whole. This form of common ownership appears to be reserved for husband and wife or family members only.⁸⁹ A full definition of the rights and responsibilities of common owners under either form awaits further legislation. It is known, however, that the exercise of common ownership will require agreement of all the owners in order to sell, exchange, or otherwise dispose of the property and to lease or mortgage it. Thus, although the law places no limit on the number of citizens who may join together in common ownership. In reality, the number will be fairly small, and appears to foreclose the possibility that residents of large multiple dwellings will be able to acquire the land under their buildings.⁹⁰

86. Law on Land, arts. 14, 16; Law on Lease of Land, art. 3.

87. Law on Land, art. 14; Law on Lease of Land, art. 3.

88. Law on Land, art. 25, ¶ 3.

89. *See id.* art. 28 (providing that acquisition of land by common joint ownership and its management shall be governed by Codes on Marriage and Family).

90. This problem was the subject of much discussion by the parliamentary committee prior to the adoption of the Law on Land. Common ownership had been foreseen as a way in which residents who had acquired private ownership of their apartments in multiple dwellings could become owners of the land. However, this form of common ownership cannot work without the ability to recognize a form of cooperative ownership in which the individual residents could cede their individual rights by proxy to a management board. It is felt that this kind of cooperative structure would not conform to the constitutional clause that limits ownership to "citizens" only. The Lithuanian Department of Agriculture has stated that it will draft a decree limiting common ownership to no more than twelve citizens.

B. *Servitudes*

The Law on Land provides for the creation and dissolution of servitudes, but it does not define or limit the substance of such rights. It states that servitudes may be created either: (1) by law; (2) by decisions of the state, regional or municipal governments; and (3) by agreement between a land owner and "other natural persons or legal entities."⁹¹

With respect to government-created servitudes, this basic provision leaves unclear the distinction between a servitude and the circumstances in which the government retains or appropriates ownership of land for a road, right of way, or other right of entry or use. The law contains the clause that servitudes created by government action are to be "determined together with the transfer of the right to land parcel ownership. . . ."⁹² The law foresees the creation of such servitudes only as part of the initial privatization of a parcel.

There are two reasons for this limitation. First, the drafters contemplated the need to create rights of access in situations where the farmland is restituted to its former owners, while the buildings are retained by the present occupants or by an agricultural enterprises.⁹³ Second, there remains a question of whether the government will be able to impose servitudes on private land in the future in light of Article 23 of the Constitution, which states that the right of property is "inviolable." This principle may limit the government even though the Law on Land makes it clear that landowners are to be compensated for the loss in value of their land resulting from the imposition of the servitude.⁹⁴

With respect to servitudes created by private parties, it is unclear whether these are to be understood as personal rights of the benefitted parties, or as rights related to a benefitted parcel of land or other real property. Unlike U.S. and British law, which recognize servitudes only as attributes of "dominant" and "servient" estates, the Lithuanian law appears to allow the burdening

91. Law on Land, art. 11, ¶ 1.

92. *Id.* art. 11, ¶ 3.

93. *Id.* art. 18. Specific provisions for the division of rights in buildings and land, with attendant servitudes, are contained in Article 18, which states that, once privatized, the land of a farmer may be transferred only together with the buildings and other real estate objects which form the land tenure. *Id.*

94. *Id.* art. 11, ¶ 3.

of a parcel of land for the benefit of another person or enterprise, whether or not it is a land or real property owner. In practical terms, this will mean that the servitude appears in the land registry only as an entry against the burdened land (and not as an attribute of a benefitted parcel).

Removal of a servitude is to take place under the same procedure by which it was created — by a law, an action of the state, regional or municipal government, or by subsequent agreement of the parties. When two private parties cannot agree, one of them may petition the court for an order dissolving the servitude.⁹⁵

C. Transactions

Land transactions are subject to the provisions of the Law on Land, as well as the Civil Code. The following transactions are specifically mentioned and authorized in the Law on Land:

- sale of a state-owned land parcel to a private owner;
- other transfer of state-owned land to a private owner;
- exchange of a state-owned parcel for a private parcel;
- lease of a state-owned parcel to a private citizen or enterprise;
- loan (or pledge) of state-owned land;
- purchase and sale of land by private parties;
- grant of private land (inter vivos or bequest);
- exchange of private land;
- lease of private land;
- loan (or pledge) of private land;
- mortgage.⁹⁶

All agreements to carry out these transactions must be in writing and, if they are agreements between private parties, they must be notarized. Within three months of the date of any transaction, it must be recorded in the land registry. Failure to follow these rules will render the transaction invalid.⁹⁷

95. *Id.* art. 4, ¶ 5.

96. *Id.* art. 15. The loan or "pledge" of land is an important transaction in the context of the consolidation of farmland. It is the process by which independent private farm owners become members of a cooperative farm enterprise, pledging their small parcels into consolidated management. Law on Agricultural Companies of April 16, 1991 ("Istatymas Zemes Ukio Bendroviu"), 13 AGRARINES REFORMOS BIULETENIS 3 (1993).

97. Law on Land, art. 14.

The law spells out certain substantive provisions which must appear in every agreement of land transfer. These include: (1) the names of the parties and their identifying information; (2) the land parcel identification information and its cadastre key number; (3) a clear statement of the transaction; (4) the value of the land and terms of payment; and (5) all servitudes, conditions, and restrictions of use which includes both existing items that must be repealed from the land registry and new items resulting from the transaction.⁹⁸ In addition, the law provides that the following three conditions may be imposed by the seller or the transferrer of an interest in land:

- that the land may not be transferred to a third party during the life of the transferee or another person's life;
- that the main objective of land use cannot be changed (but this restriction cannot last more than 10 years);
- that the land may not be transferred to a third party during the life of the transferrer (but this restriction cannot last more than ten years).⁹⁹

The purpose of these clauses is to allow "conditional ownership" to be created by the grantor, but to ensure that such conditions do not run indefinitely.

Under these authorized transactions, an owner of a land parcel is free to dispose of part of a land parcel. This may result in subordinating rights by lease, a pledge of only a portion of the land, a common ownership, or the creation of new subdivided land parcels. If the land is to be subdivided, however, a plan of subdivision must be submitted to the municipal or regional district board in order to ensure that the new lots conform to minimum parcel dimensions as defined in the territorial plan or other local regulation.¹⁰⁰

D. Land Management and Regulation

The Law on Land solidifies the structure of land management and regulation by sorting out the competence of national and local authorities, and by outlining the significant regulatory and management devices. Many details have yet to be estab-

98. *Id.* art. 16, ¶ 1.

99. *Id.* art. 16, ¶ 2.

100. *See id.* art. 16, ¶ 3 (referring to the subdivision review provisions of Article 18).

lished, however, and further laws on Territorial Planning and Land Registry, as well as numerous government decrees, are being prepared.

Authority over the regulation and management of land is divided among the government of the republic, the Ministry of Agriculture, government-authorized institutes, and regional and municipal government councils. Generally, the role of the state government is to adopt the various enabling decrees which set policy and initiate programs for the optimal use and improvement of land throughout the country. The government also has final authority to adopt a national territorial plan and other economic sector plans and regulations for land and forest use. The government makes direct decisions on the appropriation and acquisition of land for state agency activities.¹⁰¹

The Ministry of Agriculture, in conjunction with other institutes authorized by the government, controls the offices and enterprises which administer the land cadastre, registry, and the surveying of land. The Ministry also has authority to initiate and propose policy for government actions related to the acquisition and appropriation of land, regulation of uses, and other management questions. It has the power to organize control of the use of state land.¹⁰²

The regional and municipal councils are given authority to control the use of the State Land Fund on a parcel-by-parcel basis. The councils decide whether to sell, lease, or grant any rights to state land parcels. With respect to both privately-owned and state-owned lands, they may consider and approve changes of the main objective of land use of any parcel and may change or allow the removal of any specific restriction or condition limiting the use of a land parcel. They may also acquire and appropriate land for public facilities if the parcel to be acquired does not exceed one hectare in a city or housing settlement or ten hectares of rural land. The councils are responsible for the day-to-day administration of the land registry and the work of land surveying. They determine the imposition of servitudes on newly-created land parcels and oversee the monitoring and enforcement of all land use regulations and the conditions and re-

101. *Id.* art. 30, ¶ 1.

102. *Id.* art. 30, ¶ 2.

strictions placed on the use of individual land parcels.¹⁰³

The substance of land regulation and management is built around the three fundamental categories of land ownership: (1) exclusively state-owned land; (2) privately-owned land; and (3) lands held by the State Land Fund. In addition, there are four major categories of land use: (1) agricultural; (2) forest; (3) preservation; and (4) the other uses, such as housing, commerce, and industry.¹⁰⁴

Direct management of land, remaining in exclusive state ownership, rests with the ministry or institution with jurisdiction over the public facilities or public uses that are established on the land.¹⁰⁵ It is unclear, however, whether their decisions are to be coordinated by any individual state agency or how the government is to exercise general oversight. It is also unclear whether the decisions of such agencies are to be subject to the territorial plans and other regulations generally applicable to other lands in the same area.

Management of the State Land Fund is exercised by the administrative bodies which report to the regional and municipal councils. During the period of initial land restitution and reform, the administrative bodies are the Agrarian Land Reform Services and their urban counterparts. Subject to the general decrees of the government and the standards set by the Ministry of Agriculture and the Ministry of Construction and Urbanization, these local government bodies set the main objective of use for every parcel that is being created. They also define and impose all of the restrictions and conditions of use that are required or deemed necessary, under the laws for environmental, historic, and parkland protection, farm or forest use protection, and proper spatial planning.¹⁰⁶

103. *Id.* art. 30, ¶ 3.

104. *Id.* arts. 35-43. The Law on Land contains separate chapters for each of the four use classifications: Agricultural, ch. VII, arts. 35-39; Forest, ch. VIII, arts. 40-41; Conservation, ch. IX, art. 42; and Land for other uses, ch. X, art. 43. These sections define the types of land and uses within each category and set additional limitations to be applied to all such lands. For example, Article 37 on farm land defines the parties who may constitute a farm family and limits each family to the ownership of one private farm. *Id.* art. 37. It further provides minimum acreage for farm operations of different types, and states that the person who is being registered as owner of a farm must reside within ten kilometers of the location of that farm. *Id.*

105. *Id.* art. 4.

106. *Id.* art. 8.

More specifically, the Law on Land states the following as necessary and appropriate restrictions to be included in the grant of title or use:

- limitations on agricultural operations to preserve soil quality and other environmental characteristics;
- maintenance (non-use or limited use) of specific areas of a land parcel in order to preserve natural features (such as wetlands, water-course buffer zones, or stands of old trees), historic and archaeological objects or sites, designated landscapes, and vistas or other such features;
- obligations to maintain land reclamation equipment (dams, drainage channels, etc.) and roads;
- required methods of forest management to ensure sustained productivity and the protection of plant and animal species;
- restricted use of certain types of vegetation and certain areas, such as bogs, stony lands, and pasture;
- allowance of public passage or public enjoyment in areas of recreation, historic, archaeological, and cultural significance;
- restrictions on the surface use of land to preserve underground water quality, mineral deposits, or sensitive geological formations.¹⁰⁷

The development and use of land for housing and economic activities is to be governed by territorial plans that will be adopted at the national, regional, municipal, and subdistrict levels.¹⁰⁸

There remains a considerable lack of clarity in the understanding of how the outlined system of land management will function. To date, only some of the work necessary to define the various types of restrictions and conditions has proceeded. For example, the elaborate identification and mapping of sensitive environmental lands has taken place, and land parcels which fall into areas of groundwater aquifer protection, stream and river buffer zones, and wetlands are being registered with appropriate descriptions of their use limitations and the protected area delimitations.¹⁰⁹ Similarly, areas of national and regional parks and other natural, historic, and archaeological protection areas

107. *Id.* art. 10.

108. *Id.* A new Law on Territorial Planning is expected to be drafted and presented to the Seimas during 1994.

109. See *supra* note 48 and accompanying text.

have been fixed by legislation and decree, and land parcels are being privatized and leased within these areas with appropriate limitations.¹¹⁰

On the other hand, territorial planning has not been undertaken. Important questions of future urban growth and the location of housing, commercial, and industrial activities cannot be clearly specified. This has led to numerous disputes concerning the fringes of the major cities and towns, because the local boards and the ministries are refusing to privatize land parcels in these areas, or are extremely cautious in making lands available for anything other than the most short-term uses.

CONCLUSION

Land restitution and land reform are proceeding slowly, but deliberately, in Lithuania. The pace and direction of change in the law and in the real property sector is driven by several policy concerns which must be balanced. On the one hand, there is a clear and undebated policy that the expectations of citizens to become land owners must be fulfilled. This policy was put into place by the first government of free Lithuania under the Sajudis movement, and it remained unchanged after the victory of the former Communist elements, who have led the governing coalition since 1993. In addition, there is a further general policy to move Lithuania gradually closer to Western Europe with the expectation of a future integration of its economy with the European Community. Thus, Lithuania's laws governing property and economic relations will have to mirror the basic structure of Western laws and make possible the same kinds of investment mechanisms that are available throughout Western Europe.

While this does not necessarily mean unlimited ownership

110. Law on Protected Territories. Pursuant to the Law on Protected Territories, the government has adopted decrees defining the boundaries and purposes of 30 national and regional parks, 29 karst (limestone geology) protection zones, 36 geological protection zones, 21 groundwater aquifer zones, twenty-one botanical protection zones, 5 zoological protection zones, and 14 biological/zoological protection zones. See Government Decree of Sept. 24, 1992, 18 *AGRARINES REFORMOS BIULETENIS* 31-85 (1993) (concerning regional parks and reservations ("del regioniniu parku ir draustiniu isteigimo")). Similarly, six major national parks have been established. See Decree of April 22, 1992, 18 *AGRARINES REFORMOS BIULETENIS* 91-130 (1993) (concerning Dzukios, Kursiu Nerijos, and other national parks ("del Dzukijos, Kursiu Nerijos, Zemaitijos, taip pat Aukstaitijos nacionalniu parku, Traku istorinio nacionalinio parko laikiniu nuostatu ir Viesviles valstybinio rezervato nuostatu patvirtinimo")).

or control of land by all persons and institutions (whether natural, legal, foreign, or domestic), it does appear to require mechanisms of reasonable and secure control of land by foreign and domestic investors. The ability to purchase and sell rights to land, to hold leases of reasonable duration, and to use land as collateral for capital loans must be secure in the law and workable in practice.

Balancing these two concerns, the government coalition and other elements of the Seimas wish to ensure that the land, as a resource, provides a benefit to as many citizens as possible and is equally and fairly distributed. The leadership recognizes that this is an historic time in which the society as a whole is being restructured. It wishes to avoid a situation in which a few families gain control of the majority of resources, and it wishes to position as many families as possible to share in the future economic growth it expects. Land is perhaps the only resource of stable value and future potential which the socialist economy left behind. Through the parallel privatization programs in other countries, citizens are receiving shabby apartments and other housing, whose deferred maintenance leaves them with a heavy cost. In addition, these citizens are receiving rights to state-owned enterprises, whose liabilities often far exceed the value of obsolete assets and whose prospects of future profit are often dim.

Another consideration is the need to ensure that land restitution and land reform are consistent with the policies of environmental protection and appropriate land management practices. This consideration finds its strongest expression within the government ministries and professional institutes, where it is subject to dual motivations, both the genuine understanding of professionals to achieve scientifically correct solutions and their desire to maintain control over land use and land management decisions.

The Lithuanian experience, to date, is the outcome of this set of balanced considerations. There appears to be a widespread understanding that, if the processes of land restitution and reform are not done correctly at this time, it will be impossible or very costly to correct mistakes in the future. Most lawyers and government officials seem to agree that the "inviolability" clause of Article 23 of the Constitution will foreclose the government from imposing additional controls on land use and man-

agement once the land has been given over to private ownership. Thus, they believe that it is better to retain state ownership for a few years in order to have the system of environmental regulation and territorial planning fully implemented. This, of course, is contrary to the expectations of a majority of the public, who have expected speedy decisions on their land claims and unlimited rights and controls once those claims have been satisfied.

This deliberate policy has also been at odds with the expectations of some interested international organizations that have pressed the government of Lithuania to proceed quickly toward a full market economy. Privatization of the land and its use as collateral for mortgage loans is viewed as an important way of unlocking future value and providing the means of raising much needed capital for economic recovery. However, instead of the five-year timetable for land, the actual timetable will be closer to twenty years.¹¹¹ If this is true, then land restitution and reform cannot be viewed as processes that will have a short-term impact on the Lithuanian economy. Alternative strategies for a slower infusion of capital into land development and agriculture and forest production must be contemplated.

Lithuania appears capable of achieving private ownership of a substantial portion of its land resources and of maintaining an effective system of land management and environmental control. This is partly a result of its demography. The Lithuanian population is stable and relatively small, and its cities are of modest scale and are not growing at any substantial rate. Lithuania has preserved large areas of rich and productive cropland and also retains substantial areas of unspoiled natural resources and natural beauty. Further, because it was not heavily industrialized, it is not burdened by the immense environmental degradation that characterizes other areas of the former Soviet Union. Thus, while there is need for the world community to work closely with the Lithuanians to support their efforts, it is easy to be optimistic about their ability to create a system of well-functioning land rights and land management.

111. UNITED NATIONS FOOD & AGRICULTURE ORGANIZATION, REPORT OF IAN WILLIAMSON ON MISSION TO VILNIUS, LITHUANIA (Sept. 1993).