may have to be enacted to create the new autonomous bodies to be entrusted with the task of facilitating and overseeing the process of partial privatisation. At present, the equity of PSEs is not quoted at stock exchanges and therefore arrangements will have to be made to determine the sale and purchase prices of their shares. For this, appropriate changes and devices will have to be worked out in the Companies and Securities law. Moreover, while embarking on a programme of progresssive privatisation, industrially sick units will have to be closed down which will result in massive retrenchment and unemployment of workers. Suitable amendments will have to be effected in the relevant industrial/labour laws to ease the cost of human adjustment.

15. For implementing stages III and IV of privatisation, since the character of the PSE undergoes a transformation, considerable restructuring will be involved. Such restructuring will need a suitable legal framework. This legal framework generally includes constitutional guarantees and/or a law creating and respecting property rights, in which the term 'property' is given the widest connotation; a law setting forth provisions for the transfer of property; a law regulating industrial development; a law relating to pollution prevention and environmental protection; a companies law; a contract law; an insolvency law; a securities law; a law of taxation on corporate incomes and dividends; an excise law (*ad valorum* and value-added taxes); a competition law; and a set of industrial/labour laws regulating, *inter alia*, the treatment of employees in privatised enterprises.

16. Constitutional guarantees and/or a law creating and respecting property rights is a prerequisite because clearly defined property rights are an essential precondition of privatisation. The law regulating transfer of ownership of land and businesses is required because almost all businesses to be privatised will involve the transfer of, or the right of use, land from the State to the enterprises concerned. Such a law will provide whether companies with a certain percentage of foreign ownership can hold real property, and if so, under what conditions. The law relating to industrial development will specify the sectors which are reserved to the public sector and those which are open to the private enterprise. The prevention of pollution law, apart from checking pollution, will fix the liabilities for pollution damage caused by industrial accidents. The company law will specify the forms of business organization (joint stock companies, both public and private, partnerships etc.), confer separate legal personality on the business organizations and provide the extent of protection to investors from liabilities incurred by the business organizations in which they invest. The contract law is *sine qua non* for commercial exchanges as it makes the contractual obligation binding on the parties to a contract. The insolvency law is necessary to deal with those businesses which fail to make a profit or are unable to continue to pay to their creditors. This will apply to private individuals as well as to businesses and will deal with the way in which outstanding creditors are paid from the pool of remaining assets. The securities law is required to create the necessary legal and regulatory framework within which the market for trading securities is established and made functional and to protect the

interests of investors. Such a law will also lay down rules governing the operation of a stock exchange and the information that must be disclosed by companies to obtain a listing on the exchange. The tax law, apart from taxing corporate incomes and dividends, will provide fiscal incentives for the establishment of new industrial enterprises. The competition law, an essential precondition for privatisation, is intended to promote a healthy competitive environment and to ensure that PSEs, once privatised, do not maintain their monopolistic position. Side by side with the competition law, an independent *quasi* judicial body (such as the Monopolies and Restricted Trade Practices Commission in India) will have to be created to investigate and to implement the said legislation.

17. This body of laws may have to be complemented by a transformation law and a privatisation law. The transformation law will be needed to facilitate the transfer of title to businesses from the State to the private sector. Such a law will provide that a PSE may be transformed either by the Government itself or by the management and/or workers with the permission of the Government. It might adopt either of the following two approaches : (i) The PSE may be transformed into a company, and once this has taken place the State will be the sole shareholder of the company and the shares may then be sold in the privatisation process; and (ii) a new company will be formed and the government will contribute various assets together with the business as a going concern as its contribution to the capital. The remaining shares in the new enterprise may then be sold to raise finance for the running of the business.

18. A specific law on privatisation will be necessary to empower the government to carry out the privatisation programme. This is because under the Constitutions of many a State, a trade or industry can be nationalised by legislation and that too for a public purpose. From that it necessarily follows that a trade or industry can be privatised only by a specific enactment for that purpose and that such legislation must disclose the grounds on which public or community interest is better served by privatisation. Moreover, in the case of those countries whose Constitutions ordain the State to function as a welfare State and vest the ownership of all means of production and natural resources in the State, a constitutional amendment may be necessary specifically providing that privatisation is justified in public interest only when it leads to greater productivity, efficiency and development.[7]

ANNEX - I

ASIAN-AFRICAN LEGAL CONSULTATIVE COMMITTEE

Questionnaire

1. What have been the social, economic and political factors which have

7 Upendra Baxi. "Constitutional Perspectives in Privatisation". *Mainstream* (India), July 6, 1991.

led your Government to go in for privatisation ?

2. How is the term 'privatisation' defined in your country ?

3. What aims has your country set for privatisation ?

4. What is the precise sphere of privatisation (sectors and industries) ?

5. What are the economic, financial, fiscal and legal preconditions for privatisation in your country ?

6. The basic methods and procedures for privatisation appear to be as follows :

(i) *Private sale of shares* – In this, the State sells all or part of its shareholding in a wholly or partly-owned State enterprise to a pre-identified single purchaser or group of purchasers.

(ii) *Public offering of shares* – In this the State sells to the general public or to a limited class of purchasers all or large blocks of stocks it holds in a wholly or partly owned State enterprises.

(iii) *Management/Employees Buy-out* – This refers to the acquisition of controlling shareholding in a company by a small group of management and/or employees.

(iv) *Sale of assets* – This involves sale of particular assets (trade marks, plants etc.) rather than shares in a going concern.

(v) *Restructuring* – This involves the breaking-up of a state-owned enterprise into several subsidiaries.

(vi) *New private investment* – In this modality, the State does not dispose of its existing equity in a public undertaking, but increases overall equity and causes a dilution of the Government equity.

(vii) *Leases and Management Contracts* – These are arrangements whereby private sector management, technology and/or skills are provided under contract to a State-owned undertaking or in respect of State-owned assets for an agreed period and compensation.

Which of these modalities are adopted in your country for privatisation and what have been the legal problems encountered in that regard ?

7. Has your Government set up a statutory body to supervise privatisation process ? If so, what is its role, rights and obligations ?

ANNEX - II

SINGAPORE

Answer to Question 1 :

The rationale for our privatisation programme is as follows :

(a) To withdraw from commercial activities which no longer need to be undertaken by the Public Sector;

(b) to add breadth and depth to the Singapore stock market by the floatation of government linked companies and statutory boards and through secondary distribution of government-owned shares; and

(c) to avoid or reduce competition with the private sector.

Answer to Question 2 :

The initial sale of shares of a subsidiary that has hitherto been wholly-owned by the Government is "partial privatization". The sale of shares of a partially privatized company is "further privatization"; sale to the extent of giving away control of a company is "effective privatization" and complete withdrawal from a company is "total privatization".

Answer to Question 3 :

Please see answer to Question 1.

Answer to Question 4 :

The Government has shareholdings in a very diversified group of companies. Our policy is to privatise as many companies as possible.

Answer to Question 5 :

Companies which are privatized through public floatation must satisfy the listing requirements laid down by the Stock Exchange of Singapore. Please see attachment.

Answer to Question 6 :

We do not restrict ourselves to any one particular method, as we have to look at the situation and circumstances of each case of privatisation. We have not encountered any major legal problems so far.

Answer to Question 7 :

No.

PART - I

ORIGINAL LISTING REQUIREMENTS

A. Criteria for Original Listing

101. General

The approval of an application for the listing of securities on the Stock Exchange of Singapore Limited is a matter solely within the discretion of the Exchange.

The Exchange has established certain numerical standards, set out below, which will be considered in evaluating potential listing applicants. Aside from the numerical standards set out below, there are, of course, other factors which must necessarily be taken into consideration in determining whether a Company qualifies for listing. A Company must be a going concern or be the successor of a going concern. While the amount of assets and earnings and the aggregate market value are considerations, greater emphasis is placed on such questions as the degree of national interest in the Company, the character of the market for its products, its relative stability and position in its industry, and whether or not it is engaged in an expanding industry with prospects and/or maintaining its position.

102. Ordinary Shares

Companies applying for quotation of ordinary shares are, as a general rule, expected to meet the following criteria :

(1) It has a paid-up capital of at least $ 4,000,000.

(2) At least $ 1,500,000 or 25 per cent of the issued and paid-up capital (whichever is the greater) is in the hands of not less than 500 shareholders.

(3) A minimum percentage of the issued and paid-up capital is in the hands of shareholders each holding not less than 500 shares and not more than 10,000 shares :

Nominal value of issued and paid-up capital	*Minimum percentage*
Less than $ 50 million	20%
$ 50 million and above and less than $ 100 million	15% or $ 10 million whichever is the greater
$ 100 million and above	10% or $ 15 million whichever is the greater

In complying with this distribution, the following are to be excluded :

(a) Holdings by parent, or companies deemed to be related by virtue of Section 6 of the Companies Act.

(b) Holdings by directors (including those of persons designated directors under the Companies Act).

(4) Except in very exceptional circumstances, the Exchange will refuse a quotation to partly paid shares, and even, should such a quotation be granted to such partly paid shares, the Exchange may impose such restrictions on the dealings in such shares.

103. Bonds, Debentures and Loan Stock

A Limited Liability Company seeking official quotation of Loan Securities may be considered for admission to the official list if :

(1) It has at least $ 750,000 of issued loan securities of the class to be quoted;

(2) There are at least 100 holders of such securities;

(3) The securities are created and issued pursuant to a Trust Deed, which must comply with the Trust Deed requirements of the Exchange as set out in Part X, the trustee of which is :

(a) A company authorised by the law of Singapore to take in its own name a grant of Probate or Letters of Administration of the estate of a deceased person;

(b) A company registered under any law of Singapore relating to Life Insurance;

(c) A banking company;

(d) A company of which the whole of the issued shares are beneficially owned by one or more companies referred to in (a), (b) and (c) above;

(e) A company approved for this purpose by the Government of Singapore as trustee for the holders of such securities.

104. Securities of Foreign Companies

The requirements for admission to the Official List of foreign companies shall be prescribed by the Exchange from time to time and such requirements shall be published as "Guidelines for the listing of foreign companies".

105. Exploration and Development Companies

An application for listing from a Company whose current activities consist solely of exploration will not normally be considered, unless the Company is able to establish :

(1) The existence of adequate reserves of natural resources which must be substantiated by the opinion of an expert in a defined area over which the Company has exploration and exploitation rights, and

(2) An estimate of the capital cost of bringing the Company into a productive position, and

(3) An estimate of the time and working capital required to bring the Company into a position to earn revenue.

106. Property Investment/Property Development Companies

The Exchange generally will not list a property Company unless a valuation of the freehold and leasehold property of the Company or the Group (such as the case may be) has been conducted by an independent professional valuer on a date which should be not more than six months

from the date of the Company's application to the Exchange for quotation.

107. Special Type of Companies

(1) Companies with good prospectus for growth and are in need of raising capital may be considered for listing notwithstanding that they have yet to establish any track record or otherwise unable to comply with any of the listing requirements of the Exchange. The Exchange will take into consideration all pertinent factors, particularly with regard to the quality and expertise of the management and/or board of directors of the companies.

(2) If, in the opinion of the Exchange, a Company seeking admission to the Official List is engaged in a business or activity which is peculiar to a particular trade and for which the requirements of the Exchange may not be totally applicable, the Continuing Listing Requirements of the Exchange in general and the Directorate Requirements in particular, may be amended to bring the requirements more in line with the nature or activity of the company.

B. Policies

111. Conflicts of Interest

The existence of material conflicts of interest between Companies and their officers, directors or substantial shareholders (or members of their families or concerns controlled by them) will be reviewed by the Exchange on an individual basis in considering the eligibility of Companies for original listing. In many cases, Companies may be able to eliminate conflicts situation prior to listing within a reasonable period after the listing and may be asked to do so. Where a conflict cannot be resolved promptly for some business reasons, the Exchange will consider all pertinent factors.

The most common types of conflict situation to which this policy applies include personal interests of officers, directors or principal shareholders in any business arrangements involving the Company, such as the leasing of property to or from the Company, interests in subsidiaries, interests in business that are competitors, supplies or customers of the Company, loans to or from the Company etc.

In considering the eligibility of Companies applying for original listing under its conflicts of interest policy, the Exchange considers, among other factors :

(1) persons involved in conflict and relationship to the Company;

(2) significance of conflict in relationship to the size and operations of the Company;

(3) any special advantage for management involved in the conflict;

(4) whether the conflict can be terminated, and if so, how soon and on what basis, and, if the conflict cannot be promptly terminated, whether :

(a) the arrangement is necessary or beneficial to the operations of the Company;

(b) the terms of the arrangement are the same or better than those that can be obtained from unaffiliated concerns;

(d) the arrangement has been adequately disclosed to shareholders through prospectus, proxy statements or any reports.

In some cases, the Exchange will require a Company to enter into a special arrangement with the Exchange, designed to reduce the possibility of a conflict situation that could not be terminated immediately.

112. Memorandum and Articles of Association

Companies seeking admission to the Official List of the Exchange are required to incorporate into their Memorandum and Articles of Association various provisions which are set out in Part IX of this Manual.

C. Additional Requirements

121. Original Listing Application

Companies seeking admission to the Official List must submit an application for original listing in accordance with Part II of this Manual. Application for original listing is designed to serve the purpose of placing before the Exchange the information essential to its determination as to the suitability of the securities for public trading on the Exchange.

122. Prospectus

All Companies seeking admission to the Official List of the Exchange, whether through a public issue, Offer for Sale or an Introduction, must issue a prospectus which must, in addition to complying with the prospectus requirements of the Companies Act, comply with the prospectus requirements of the Exchange as set out in Part VII.

123. Additional Listings

Following listing, Companies and their registrars are not permitted to issue any securities in excess of those authorised for listing until the Exchange has approved an additional listing application covering the additional securities as described in Part IV.

124. Listing Undertaking

Companies applying for listing on the Exchange are required to enter

into an Undertaking with the Exchange to comply with all the listing requirements and policies of the Exchange.

125. Allotment of Shares reserved for Employees etc.

Companies seeking admission to the Official List may be permitted by the Exchange to reserve up to 10% of the offered shares for allotment to their employees, executive directors, customers, suppliers etc. provided that the companies lodge with the Exchange a statement giving number of shares to be allotted to the following categories of persons and the basis of allotment :

(a) employees;

(b) executive directors;

(c) customers;

(d) suppliers; and

(e) others (state relationship with issuer).

ANNEX - III

THAILAND

1. What have been the social, economic and political factors which have led your Government to go in for privatisation ?

   – Economy is the main factor which has led the Thai Government to adopt the policy of privatisation. Thailand's high rate of economic expansion has led to the problem of the lack of basic infrastructure and the consequential bottleneck problems. In order to support the country's rapid economic expansion, it is, therefore, necessary for the Thai State enterprises to expand their services in cooperation with the private sector.

2. How is the term 'privatisation' defined in your country ?

   – In Thailand, the term 'privatisation' connotes the increase in the private sector's role in the management of State enterprises.

3. What aims has your country set for privatisation ?

   – The objectives set by Thailand in the case of privatisation are as follows :

     1. to maintain Thailand's financial stability by reducing foreign loans;

     2. to reduce the burden of government subsidies;
     3. to improve the efficiency in the management of State enterprises; and
     4. to mobilize the private sector to use more of their savings to invest in State enterprises by means of increasing the potential of the domestic capital market.

4. What is the precise sphere of privatisation (sectors and industries) ?

   – The sphere of privatisation mainly covers the following infrastructure :

     1. transporation;
     2. communication; and
     3. energy.

5. What are the economic, financial, fiscal and legal preconditions for privatisation in your country ?

   – The preconditions for privatisation in Thailand are as follows :

     1. a clear plan of action;
     2. legal preparation including amendment of the existing legislation which impedes privatisation, and enactment of new legislation to facilitate privatisation;
     3. public relations campaigns with a view to making the objectives of privatisation clear and acceptable to the public; and
     4. development of capital market to support privatisation.

6. The patterns/procedures for privatisation applied in Thailand appear to be as follows :

   (i) *Private sale of shares* was introduced in the case of the Chonburi Sugar Industry Co. Ltd., whereby all of its shares were sold to the private sector;

   (ii) *Public offering of shares* was introduced in the case of the North East Jute Mill Co. Ltd., whereby its shares were sold in the Stock Exchange of Thailand;

   (iii) *New private investments* were introduced in the case of the Thai Airways International Co., Ltd., whereby its capital was increased and its shares will be listed in the Stock Exchange of Thailand;

   (iv) *Joint venture* as in the case of the NARAYANA Phand Co. Ltd., and the Erawan Hotel, of which the Government is now a minority shareholder;

(v) *Concessions* as in the cases of the Bangkok Mass Transit Authority and the Transport Company Limited whereby part of their bus routes were conceded to the private sector. (A similar method is used in the case of the second phase of the Express Way Project); and

(vi) *Liquidation* as in the case of the Jute Mill of Ministry of Finance.

- Legal problems concerning privatisation arise when some State enterprises want to sell their shares to the public. Since these State enterprises were not established in the form of limited companies, they, therefore, have no share capital. However, legislation allowing the division of the capital of these State enterprises into shares is being contemplated.

- In some cases, investment and competition by the private sector have not yet been possible since certain existing legislation, such as the laws on telegraphic and telephone services still prohibit the private sector from providing such services.

- So far, Thailand has not enacted any legislation specifically to protect the interests of either the State or the private sector in case of privatisation.

7. Has your Government set up a statutory body to supervise privatisation process ? If so, what is its role, rights and obligations ?

- At present two government agencies have been assigned to look after and supervise privatisation process. The Office of the National Economic and Social Development Board is responsible for policy matters, while the Ministry of Finance looks after the actual implementation of the privatisation schemes.

VIII. ESTABLISHMENT OF A DATA COLLECTION UNIT IN THE AALCC SECRETARIAT

(i) INTRODUCTION

1. During the Nairobi Session of the AALCC (February 1989), the Head of Delegation of the Republic of Korea commended the AALCC for tackling legal aspects of economic problems in the Asian-African region, but felt that it should assume a more active role in removing legal obstacles in the way of promoting the cause of economic development in the region in the context of the prevailing world economic situation. Noting the significant nexus between economic development and harmonization of legal regimes governing economic activities through sharing of accumulated experiences amongst the Member States of the AALCC, he proposed the establishment of a Centre for Research and Development of Legal Regimes applicable to Economic Activities and Changing Situation of the Afro-Asian countries under the auspices of the AALCC entrusted with the following functions :

(i) to collect and distribute overall information on existing legal regimes and the changes taking place therein relating to economic development of Member Countries;

(ii) to organise research, seminars or symposia on relevant matters;

(iii) to give legal advice and assistance to Member Governments upon request; and

(iv) to train officers of the Member Governments in dealing with legal aspects of economic matters.

He assured the AALCC of his Government's willingness to make financial contribution for organising the Centre under the auspices of the AALCC and for the preparation of a feasibility study for establishing such a Centre.

2. Noting the importance of the proposal, the Nairobi Session authorised the Secretary-General to appoint a Consultant from one of the Member States to prepare a feasibility study on the proposed Centre for consideration at its subsequent session.

3. After the Nairobi Session, the Government of the Republic of Korea placed a sum of US $ 25,000 at the disposal of the AALCC Secretariat. Thereafter the Secretary-General appointed Prof. Kazuaki Sono of the Hokkaido University, Sapporo (Japan) as Consultant and entrusted him with the task of preparing a feasibility study for establishing the proposed Centre.

4. During the Beijing Session of the AALCC held in March 1990, the matter was discussed by the Heads of Delegations on the basis of a preliminary report presented by Prof. Sono, the Consultant. The Consultant was unable to prepare a definitive report in the absence of an indication as to the

venue of the proposed Centre and the sources and extent of funding. The preliminary report envisioned the proposed Centre as an information and research institution as the bulk of the relevant information was already available but required processing and expertise which would be a major commitment. The report also emphasized the necessity to ensure that the proposed Centre would not duplicate activities already underway in other global or regional institutions.

5. The Heads of Delegations took note, with appreciation, of the report of the Consultant and directed the Secretariat to submit an indepth study on the ways and means of concretising the ideas contained in the proposal of the Republic of Korea which was considered commendable.

6. At the thirtieth session of the AALCC held in Cairo in April 1991, the Secretariat presented an indepth study on the matter contained in document No. AALCC/XXX/Cairo/91/17. That study, at the outset, surveyed the work of a number of UN organs and other organisations to ascertain whether their activities encompassed harmonisation of laws and regulations relatable to economic matters and came to the finding that that sort of activity was not being pursued in any of those institutions although they did collect information on a universal basis on the topics falling within their respective fields of competence some of which might be of relevance to the Member States of the AALCC. After conducting that survey, the Study examined the validity and viability of the projected Center in the light of the contemporary international economic environment and came to the conclusion that the proposed Center would be a unique institution as a collector and disseminator of overall information about the legal regimes applicable to economic activities and the changes taking place therein, not only in the Afro-Asian region, but worldwide having an impact on the economies of the region.

7. Having established the justification for the proposed Centre, the Study examined two modalities for implementing the proposal by the Government of the Republic of Korea : the first one contemplated the establishment of the Centre as an autonomous institution to be hosted by a Member Government albeit under the auspices of the AALCC. The second one envisaged the setting up of a Data Collection Unit as an integral part of the AALCC Secretariat as the first practical step towards launching of the projected Centre by utilising the unspent portion of the Republic of Korea grant for that purpose. Having examined these modalities, the Secretariat felt that although the proposed Centre as an autonomous institution was a *sine qua non* to help Member States in Asia and Africa to quicken the pace of their development as information is key to development, the establishment of such a Centre should be pursued as an ideal long-term objective because such a project requires not only substantial finance but also preparation of considerable groundwork and development of a certain degree of expertise. Moreover, serious thought could be given to establishing the Centre as an autonomous institution only as and when a Member Government came forward to host the Centre and to bear its running costs singly or jointly

with other interested Member Governments. The Secretariat, therefore, suggested that the first practical step towards implementing the aforesaid long-term objective should be to set up a Data Collection Unit as an integral part of the Secretariat to be financed by the unspent portion of the grant of US $ 25,000 made by the Government of the Republic of Korea. If after two years the Member States consider to continue the Unit, its cost would be met from the general budget of the AALCC.

8. At the Cairo Session, the foregoing study was discussed by the Heads of Delegations with the Heads of Delegations of the Republic of Korea, Ghana, Kenya and Arab Republic of Egypt taking an active part. Although there was general agreement amongst the Heads of Delegations on the proposed establishment of a Data Collection Unit as an integral part of the Secretariat as a first step towards the long-term objective of setting up of an autonomous Centre for Research and Development as and when a Member Government came forward to host the Centre and to bear its running costs singly or jointly with other interested Member Governments, they were somewhat concerned about the financial implications of the proposed Data Coollection Unit for the AALCC. The Head of Delegation of the Republic of Korea made a statement that although the initial expenses for installing the Unit could be met by the contribution made by his Government, it would not be possible for his Government to make further voluntary contributions to meet future operational and maintenance expenses of the Unit. Concern was also expressed about the prospect of the Unit being sustained on the basis of voluntary contributions as was suggested by a few Delegations. In view of these concerns, the Heads of Delegations directed the Secretariat to prepare a further study detailing information on the financial implications involved for the AALCC in the establishment and running of the Unit as an integral part of the Secretariat. The Secretariat was also directed to put up such a study before the Liaison Officers before its submission to the Thirty-first Session in Islamabad for a final decision on the matter.

Discussions and Decisions taken at the Islamabad Session

9. At the thirty-first session of the AALCC held in Islamabad in January-February 1992, the matter was further discussed by the Heads of Delegations on the basis of a note presented by the Secretariat entitled "Establishment of a Data Collection Unit as an Integral Part of the AALCC Secretariat" contained in Doc. No. AALCC/XXXI/Islamabad/92/17 which was a study on the financial implications of the setting up and running of a Data Collection Unit within the Secretariat which had earlier been approved by the Liaison Officers at their 229th meeting held on 28th of November 1991.

10. The *Secretary-General* introducing the Secretariat study outlined the gist of the proposal and the financial implications to be as follows :

"It is proposed to set up the Unit initially for a period of two years, viz. 1992 and 1993. The establishment and operational costs of the Unit