CONTRACT LAW ENFORCEMENT (CLE) PROGRAM

Annual Work Plan

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Contract Law Enforcement (CLE) Program
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Introduction

Objectives

The objectives of this program are (1) to assist Kosovo institutions to improve the enforcement of civil judgments in an effective, efficient, and accountable manner; to establish and functionalize the anticipated new enforcement system in Kosovo; and to develop mechanisms to reduce the backlogged enforcement cases in the Kosovo court system; and (2) to assist Kosovo to develop and harmonize its contract and commercial law framework and systems; improve the contract enforcement systems and the functioning of Alternative Dispute Resolution (ADR) (Mediation) mechanisms.

Problem Statement

The Contract Law Enforcement (CLE) Program will build on the progress achieved by the SEAD Program and other USAID and donor programs. It will focus on the needs of the beneficiaries as well as new challenges in the development of Kosovo's commercial law framework such as the implementation of the new law on obligations, enforcement of court judgments and enforcement of contracts, alternative dispute resolution mechanisms, and related work with the business community.

Beneficiaries and observers note that the contract and commercial law framework requires further development, particularly if Kosovo hopes to attract investment. Implementing regulations and guidelines are required for many laws so they can be effectively implemented. Beneficiaries also note that codifying all pieces of civil legislation, including those related to the commercial sector, would be an important way to conform Kosovo's legislation to European standards and a mechanism through which Kosovo's legal community could clarify unclear provisions in the law and address inconsistencies. In parallel with these legislative activities, focus needs to shift on building and improving all the necessary mechanisms that lead to better enforcement of contracts.

As a complement to legislative development in the commercial sphere, education for judges who adjudicate commercial matters is necessary, particularly as they need to bring themselves up to speed on the many changes that have or will soon be made in the area of commercial law. Judicial education in this sector is also important because of the current restructuring of the court system. The court restructuring that took effect in January 2013 and with it the newly established commercial departments of Pristina Basic Court and Court of Appeals that have broader jurisdiction than that of the predecessor Commercial Court. Given the restructuring, many of the judges assigned to the commercial departments may not have expertise in areas of commercial law; as a result, they would benefit from a specialized training program. Similarly, training for judges assigned to the new Special Chamber of the Supreme Court might be necessary given the complexity of the specific category of cases for which they are responsible. In addition, commercial lawyers and other relevant legal professionals in the field would benefit from similar training programs.

Observers and beneficiaries tell USAID that clearing the backlog of execution of judgments will remain a significant burden on the court system following the end of the SEAD program. The backlog, until completely resolved, will continue to impede enforcement of judgments in Kosovo and little assurance of meaningful, timely and affordable resolution of disputes. Therefore, it is the goal of the CLE program to assist local stakeholders in substantially clearing the execution backlog before the end date of the project.

Further, establishing the anticipated new enforcement system will be an important way to improve Kosovo's efficiency in terms of enforcement of judgments as well as enforcement of contracts. New bodies established by the Law on Execution Procedures and responsible to oversee the new system will require assistance to develop institutional capacity and, together with the legal departments of theKJC and MOJ, require assistance in drafting secondary legislation needed to implement the new law. Among the tasks envisioned for this new system, are:

1) the recruitment, appointment, supervision, and control of private enforcement agents;
2) the development and maintenance of a register of new enforcement agents; and
3) the drafting of regulations or guidance on the conduct of new enforcement agents, including guidance on performance standards, and regulations governing seizure, storage and sale by public auction of property subject to enforcement.

The regulations and guidance noted in (3) above should be coordinated with those adopted by the recently established Agency for the Management of Sequestered and Confiscated Assets. The Chamber of Enforcement Agents will be charged with developing a Code of Ethics for enforcement agents and organizing professional training for its members. Of greatest importance will be the role that these new bodies (including potentially AMSCA, and the Chamber, once formed) will have in ensuring the accountability of new enforcement agents and handling public, creditor, and debtor complaints promptly and effectively. There is certainly some risk in delegating court functions to new enforcement agents: if they do not perform their duties in accordance with law, show respect for debtors' rights, and refrain from rent seeking, the public will further lose confidence in the enforcement system and, by association, in the entire court system.

The effective functioning of the nascent arbitration and mediation mechanisms in Kosovo is also important to relieving the burden on the courts and to efficiently arrive at a resolution of disputes. Their reliability is vital to business use of arbitration clauses in contracts and arbitration proceedings, public confidence in mediation as an alternative to the court, and improved flow of cases within the courts. There are several elements critical to the success of these mechanisms. First is the professionalization of arbitrators and mediators. With further education and specialization in commercial matters, arbitrators and mediators are more likely to win the respect of businesses and other potential participants and, through word of mouth, foster greater demand for ADR. Mediators who would like to specialize in commercial cases, for example, will require advanced training. More importantly, arbitration and mediation will effectively reduce the caseload of judges only if arbitral awards and mediation agreements are timely and effectively recognized and enforced by the court system. As a result, judicial practice in this area should be monitored and, if needed, improved with the support of experts in the recognition of and enforcement of arbitral awards and mediation agreements. In the case of mediation, judicial skill in implementing the Protocol on Court Referral of Cases to Mediation is critical and in the case of enforcement of arbitral awards, clarity of procedure and judicial practice is yet to be attained. Finally, the functioning of the arbitration centers may be improved through improved case management systems and outreach to the business community concerning the use of contracts and the benefits of arbitration and commercial mediation.

Improvement in various court and government processes and capacities is also needed to make enforcement of judicial decisions more efficient. For example, the enforcement of cases relating to security interests in movable property like automobiles would be made easier if the

cooperation between the Pledge Agency and the Kosovo Judicial Council (KJC) improves. In another example, commercial banks complain that the practices of court enforcement clerks are slowing down the enforcement of judgments through debtor bank accounts and making it more costly. Enforcement orders sent to commercial banks arrive at commercial banks in different formats, depending on the particular court issuing the order, and often do not include all of the information that is required for the bank to process the order. One bank noted that it spends nearly 30,000 Euros a year on correspondence with the courts. And, when a bank notifies the court that the debtor has transferred funds out of an account, it is not required to provide information as to any local account to which it has been transferred. The bank provides this information only when specifically requested.

Finally, it is of crucial importance that a serious dialogue is built with the business community and that mechanisms are also established for all the above-mentioned reforms to be implemented and translated into daily business practice.

STATEMENT OF WORK

CLE will build on the progress achieved by the SEAD program and focus on new challenges in the contract and commercial law area. The CLE program consists of two components:

I. Improved Enforcement of Judgments System and Reduction of the Backlog in Enforcement Cases; and
II. Development of the Contract and Commercial Law Framework and Systems, improvement of contract enforcement systems, and the functioning of ADR mechanisms.

Both will need to be accompanied by related outreach activities and discussions with the business community that support information sharing, transformation of the reforms into daily business practice, increased demand for justice, and growing use of these new systems.

The ultimate beneficiaries of the CLE program are the commercial enterprises working in Kosovo, and their current and potential workers. They will be able to operate in a more transparent, secure, predictable business environment, and reduce their costs of doing business. This is supportive of private sector expansion and a higher rate of job creation.

The potential beneficiaries of this program will include but are not limited to the Kosovo Judicial Council, the Ministry of Justice, the anticipated Chamber of Enforcement Agents, the Central Bank, the Commercial Departments of the Pristina Basic Court and Court of Appeals, the Special Chamber of the Supreme Court, the Kosovo Chamber of Commerce, the American Chamber of Commerce, and the Kosovo Judicial Institute.

In performing these tasks, CLE will coordinate with other existing and future projects of USAID, the Government of Kosovo, and other donors in order to complement rather than duplicate other efforts and resources.

DETAILED WORK REQUIREMENTS

A. Component I: Improved Systems for Enforcement of Judgments and Reduction of

Backlog in Enforcement Cases

Objectives:
Assist Kosovo institutions to improve the enforcement of civil judgments in an effective, efficient and accountable manner; establish and functionalize the anticipated new enforcement system in Kosovo; and develop mechanisms for and finalize the reduction of the backlogged enforcement cases in the Kosovo court system.

Expected Results:
1. The mechanisms to support the efficient execution of judgments are developed and the enforcement case backlog is reduced and eradicated in accordance with targets established for the number, percentage, and value of backlogged cases remaining.

2. New enforcement cases are resolved within established standards for timely and efficient case processing applicable to court enforcement officers and the anticipated new enforcement system. Streamlined processes for the enforcement of judgments are implemented efficiently, including through the development of cooperative mechanisms between relevant bodies.

3. All secondary legislation required to implement the anticipated new law on enforcement procedure is completed.

4. An Enforcement Commission, or such other institution prescribed by law to oversee the anticipated new enforcement system, is established and effectively performing its functions.

5. New enforcement agents and serving court enforcement officers receive practical skills and substantive training.

6. The disciplinary mechanisms established under the new law on enforcement procedure are fully established and function efficiently.

7. The anticipated Chamber of Enforcement Agents is established and functions efficiently in fulfilling the role prescribed in the new law on enforcement procedure and relevant secondary legislation.

8. The Central Bank efficiently monitors commercial bank compliance with court orders; commercial bank compliance with court orders improves.

9. Public confidence in the Kosovo court system increases as a result of improved enforcement of judgments.

10. Businesses are informed and benefit from the reformed systems for enforcement of judgments.

Tasks:
1. Establish together with the KJC clear goals and targets for the complete reduction of backlogged enforcement cases in the Kosovo court system; support KJC to improve systems for statistics related to execution caseload.

2. Assist the KJC and other relevant bodies or actors to develop and implement mechanisms for and to achieve significant reduction of the backlog in enforcement cases in the Kosovo court system, including but not limited to utility or authentic document cases and cases relating to debt owed to commercial banks.

3. Assist in the implementation of streamlined processes for enforcement of judgments as described in the anticipated new law on enforcement procedure, including by improving coordination among enforcement agents, relevant government agencies, creditors, the courts and the banks.

4. Assist in the establishment of any new enforcement system that is prescribed by the anticipated new law on enforcement procedure and assist in the system's efficient, fair, safe and accountable operation.

5. Assist in developing the institutional capacity of the Enforcement Commission or such other institution mandated by the anticipated new law on enforcement procedure to efficiently and professionally oversee and monitor any new enforcement system.

6. Assist in completing secondary legislation required to implement the anticipated new law on enforcement procedure, including through support to the proposed Enforcement Commission or any other body to be established and to its corresponding secretariat as well as the legal departments of the KJC and the Ministry of Justice.

7. Assist in developing the secondary legislation necessary, mechanisms for their efficient implementation and the institutional capacity and efficient functioning of the new enforcement system disciplinary commission.

8. Assist in completing the secondary legislation required and support the establishment and proper functioning of the Chamber of Enforcement Agents expected to be introduced in the anticipated new law on enforcement procedure.

9. Assist in building the capacity of such private enforcement agents as are introduced in the anticipated new law on enforcement procedure as well as court enforcement officers.

10. Monitor and, as necessary, assist the Central Bank, the KJC and commercial banks to improve implementation of the Central Bank Instruction "On the Enforcement of Executive Titles by Debiting Clients' Accounts and to update the Central Bank's database of account information.

11. Monitor and, as necessary, assist local institutions and organizations to improve implementation of the agreement on the exchange of employer information between the Tax Administration and the KJC.

12. Work with the business community in order to build a dialogue that will enable the business community to receive information, provide feedback and use these reforms in their daily operations.

Deliverables:
1. Report with evidence documenting the reduced backlog of enforcement of judgments based on the targets set together with KJC.

2. Report with evidence documenting that the KJC reporting on execution caseload has improved.

3. New enforcement of judgments system established.

4. Secondary legislation and procedures for the implementation of the new law on execution procedure adopted.

5. Chamber of Enforcement Agents established and its operation procedures adopted.

6. New Enforcement Agents selected and certified.

7. Report documenting increased capacity of enforcement agents as a result of Program training and capacity building efforts.

8. Report with evidence documenting that the established disciplinary system for new enforcement agents is functional.

9. Report with evidence documenting that enforcement of judgments has improved as a result of the KJC cooperation with the Central Bank and the Tax Administration of Kosovo.

B. Component II: Development of the Contract and Commercial Law Framework and Systems, improvement of contract enforcement systems and functioning of the ADR mechanisms;

Objective:
Assist the Ministry of Justice and other relevant bodies to prepare for the codification of civil/commercial legislation and identify the secondary legislation necessary to support implementation of the anticipated Civil Code. Particularly focus on developing secondary legislation necessary for the implementation of the upcoming Law on Obligations. The objective also includes assistance for improving the systems for enforcement of contracts in terms of the judicial process and the functioning of alternative dispute resolution mechanisms.

Expected Results:
1. Kosovar institutions are prepared to harmonize commercial legislation into a new Civil Code. Necessary secondary legislation is identified and necessary secondary legislation developed in support for the Law on Obligations implementation. The implementation of the Law on Obligations is supported through training and other effective means.

2. The knowledge and skill of the judges assigned to the newly established Commercial Departments of the Pristina Basic Court and the Court of Appeals and perhaps also of judges assigned to the Special Chamber of the Supreme Court is increased; the judges' compliance with any competency standards established by the KJC increases.

3. Arbitral awards and mediation agreements are efficiently and effectively enforced by the courts – CLE will monitor the behavior of the Commercial Department of the Pristina Basic Court (PBC) vis-à-vis contract disputes (i.e., contracts with arbitration or Mediation clauses) and the recognition and enforcement of arbitral awards.

4. Judicial aspects for the systems for Enforcement of Contracts improve.

5. Contract use and the general public's awareness about important commercial law topics and legislative changes, including those related to secured transactions and the anticipated new enforcement system, increases.

6. Confidence and demand for mediation increases as the skills and knowledge of commercial mediators improve and business owners learn more about the advantages of alternative dispute resolution.

7. The mediation systems established under Kosovo legislation are independent and functional.

8. The Law Faculty of the University of Pristina professionally implements the LLM Program on Contract and Commercial Law.

9. Businesses are informed, participate in the reforms, and benefit from the reforms by making them part of their daily operations and practices.

Tasks:

1. Assist the legal departments of the Ministry of Justice, and other relevant Kosovo institutions to develop secondary legislation necessary for the implementation of the Law on Obligations
2. Improve the skills and knowledge of judges assigned to the Commercial Departments of the Pristina Basic Court and the Court of Appeals, including but not limited to areas of laws relating to obligations.

3. Identify weaknesses and improve the necessary judicial aspects for the enforcement of contracts.

4. Assist in the development of necessary mechanisms and procedures to ensure the proper and efficient enforcement of arbitral awards and mediation agreements.

5. Support the improvements in the functioning of the established mediation system and expand centers focusing on commercial mediation.

6. Monitor and, as necessary, assist local institutions and organizations in improving the education of judges and court personnel concerning the referral of cases to mediation in accordance with the Protocol for Court Referred Mediation.

7. Monitor and evaluate the LLM Program on Contract and Commercial Law and assist in improving the curriculum and teaching methodologies employed in the commercial law LLM program.

9. Encourage the promotion of contract use, arbitration and mediation among business owners consistent with the new Law on Obligations and other relevant legislation; improve the capacities of the businesses and legal community and improve the general public's awareness of important commercial law topics and legislative changes, including those related to secured transactions and the anticipated new enforcement system.

10. Help ensure that daily business practices benefit from the reforms and are used efficiently.

Deliverables:
1. Secondary legislation to implement the Law on Obligations adopted.

2. Report with evidence documenting improved skills and knowledge of judges assigned to the Commercial departments of the Pristina Basic Court and the Court of Appeals as a result of the training provided by the Program.

3. Report documenting that the process of enforcement of arbitral awards and mediation agreements functions efficiently.

4. Mediation Centers continue receiving and mediating cases and move towards sustainability.

5. Report with evidence documenting improved awareness among business community on ADR and improved use of these services.

6. Report with evidence documenting improved professionalism of Mediators and Arbitrators as a result of the training provided.

CROSS CUTTING PRINCIPLES

Participation and Stakeholder Dialogue: The Program should promote active participation and support of key stakeholders among the legal, judicial, and other relevant communities. A key element of this Program will be to support ways to gather input, build consensus, and enhance support for any changes proposed in order to ensure that they reflect local realities, and to facilitate both their adoption and their implementation.

Ownership and Sustainability: All activities should be conducted in close cooperation and partnership with local counterparts to ensure their full ownership and future sustainability. It is crucial to build consensus among the key stakeholders for adopting and implementing the proposed activities. The assistance shall, whenever possible, be designed to favor long-term solutions that could be performed by, or later taken over by, existing Kosovo counterparts.

Coordination with other Donors and Implementers: This program will require strong coordination with all relevant stakeholders involved in supporting rule of law reform in Kosovo. All major activities under this program will need to be consensus-based and well-coordinated with other donor-funded projects. These activities must also be embraced and led by the Kosovars. Furthermore, it is imperative that there be strong, regular coordination and collaboration with other USG programs that support rule of law reforms.

EU-Alignment: Support for and due consideration for EU standards and requirements is a key cross-cutting element and consideration for all activities.

Gender Analysis: Kosovar women have traditionally been in a disadvantageous position in comparison to men in all spheres of society. Lack of political will and the traditional mentality have both been identified as major obstacles for functionalizing and implementing gender-related legislation. Although the legal framework for gender equality is good, the implementation of laws is problematic. The position of women has improved and gender

equality has made progress, however, there is still work to be done in order to mainstream gender in all aspects of the society. The program will focus on improving rule of law structures that will lead to a better environment for economic growth and increased investment for both men and women, and will promote gender equality. The program will support the judiciary to increase its efficiency on enforcement of judgments overall and build the capacities of judges (28% of whom are female judges) to deal with enforcement cases more efficiently. Particular attention will be paid to the anticipated selection and appointment process for the new enforcement agents. Female candidates will be given an advantage in the University of Pristina Law Faculty LLM Program on Contract and Commercial Law. In addition, all relevant training related to the new enforcement system, new contract law related legislation, arbitration and mediation will ensure full inclusion of female judges and other female professionals.

In accordance with USAID's recognition that gender issues are important considerations in development, the program will look for gender implications and/or opportunities. It will be determined during the implementation phase whether women or particular women's groups represent useful interests or alliances for program results, and the program will identify where attention to gender issues and/or women's participation will contribute to results. Consequently, the program will identify barriers for women and will work to remove them.

Year One Planned Activities

A. Component 1 - Improved Systems for Enforcement of Judgments and Reduction of Backlog in Enforcement Cases

Understanding

The Kosovo courts' chronic and systemic inability to effectively enforce their judgments undermines rule of law and severely inhibits the robust economic growth necessary to create jobs and establish security for the youngest country in Europe. Over time, cumbersome procedures combined with a dearth of resources, low institutional capacity, and difficulties locating judgment debtors and their assets (among other factors) led to an accumulation of judgments. Well over 100,000 unresolved cases more than two years old are awaiting action. The elimination of this backlog is directly related to the courts' ability to effectively deliver justice, and with it greater trust in the institution and increased rule of law.

Eliminating the backlog carries greater importance for Kosovo than just making the courts more effective at fulfilling their role, however. Each judgment is not merely a claim for compensation; it represents a property interest and ultimately an asset unavailable for investment, entrepreneurial activity, servicing debt, or creating jobs. Poor enforcement for banks translates into less capital available for lending, and higher costs as risk premiums and the costs of unrecovered assets are passed on to the banks' customers, further limiting economic growth. Eliminating the backlog, therefore, can free considerable amounts of capital into the economy, and result in broader access to credit at lower interest rates, further stimulating investment and productive economic activity.

Checchi's SEAD Program developed and introduced several innovative mechanisms to assist the Kosovo courts to resolve problems with enforcement. These include creatively exploiting low-cost information technology solutions to improve management of the caseload (the Case Categorization component of the BRI), and identifying and introducing procedural "fixes" that enable the courts to begin resolving the backlog more efficiently (e.g. invoking the Law on Enforcement Procedures' "Special Circumstances" provisions to enable more efficient enforcement by geographic area rather than by temporal filing order; identification and archiving of civil executions based on criminal fines past the statute of limitations, etc.). To facilitate location of debtors and their assets, SEAD developed a database of bank account holders (the Account Holder Registry) at the Central Bank of Kosovo (CBK) – making it easier for the courts to enforce against bank accounts – and brokered an agreement between the Kosovo Judicial Council (KJC) and the Tax Administration of Kosovo (TAK) to share employer information to facilitate enforcement through the garnishment of wages.

SEAD also supported the MoJ's development of the recently adopted Law on Enforcement Procedures (LEP), which streamlines court processes while introducing a system of private enforcement agents to replace the current court-based system. In contrast with the court-based enforcement clerks, who are paid at the low end of the civil service scale, are poorly equipped, and are not required to be lawyers, private enforcement agents will be qualified and experienced lawyers who are required to bring greater resources to bear on enforcement actions and to operate efficiently in order to retain their licenses.

Although the system is called "private", it is more properly understood as a very highly-regulated system. The approach adopted in the new law largely reflects the approach and many of the lessons learned by the more than 20 EU member-states that also have private enforcement systems. Proper and prompt implementation will not only be important for increased rule of law and an improved investment environment domestically, but will also demonstrate progress toward Kosovo's integration with the broader European economy and factor in Kosovo's general competitiveness.

Properly introducing European standards for private enforcement will be critical in minimizing risk of failure. Introducing a wholly new institutional system in a highly technical subject area will challenge the MoJ, particularly with the aggressive implementation schedule required by law. The MoJ, with limited resources and no expertise to establish the new system, is now required to create a legal environment for private enforcement agents to operate in, including inspection and disciplinary mechanisms. Secondary legislation must be drafted and promulgated, training and licensing of the new profession must take place, and monitoring and oversight must be established for the new system to be operational in 2014. There is no time for MoJ personnel to study the issue; the system must be set up now.

Approach

Component 1 requires a dual approach to addressing systemic problems with the enforcement of judgments – the retrospective clearing of backlog and the prospective introduction of private enforcement agents. CLE will implement efforts together with the KJC to eliminate the large existing backlog of unenforced civil judgments to achieve effective elimination of the backlog at Program end.

Backlog reduction efforts will proceed while we are concurrently supporting the MoJ in the challenging task of establishing a new private enforcement system. Backlog reduction efforts are necessary to eliminate the existing backlog currently in the courts, as most of these cases must be effectively disposed of by the courts (we expect most existing judgment creditors to forego the expense required to re-file their claims with private enforcement agents). Establishment of the new private enforcement regime will introduce a system that enforces judgments in a timely, transparent, and accountable manner, to meet society's demand for justice and prevent the future recurrence of a backlog.

A.I Backlog Reduction

The first major element of the proposed Enforcement of Judgments component focuses on resolving the remaining backlog. SEAD developed several mechanisms that enable the courts to more effectively deal with the backlog, including brokering an agreement between the KJC and the Tax Administration of Kosovo (TAK) to share employer information with the courts in order to facilitate wage garnishment; establishing the Registry (database) of Account Holders at the Central Bank of Kosovo (CBK) to facilitate enforcement against bank accounts; developing a chapter of the KJC Court Operations Manual and Standard Operating Procedures (SOP) applicable to enforcement clerks; and, finally, creating an electronic database of more than 100,000 paper judgments files. These tools were in addition to other efficiency-enhancing mechanisms developed and implemented by KJC.

In Year One CLE will focus on full institutionalization of the triad of interventions that we believe are the keys to eradicating the backlog. First, we will work with a number of agencies to

take advantage of the mechanisms SEAD developed (now mostly integrated into the KJC electronic registry court files by EROL) for finding and seizing assets, including against bank accounts and against earnings. Second, we will work with the Agency for the Management of Sequestrated or Confiscated Assets (AMSCA) to improve mechanisms to seize and dispose of moveable property. Third, while we simultaneously work to implement a new system of private enforcement agents under the second element of the CLE Enforcement of Judgments component, we will continue to work with the courts and the KJC to improve the effectiveness of the existing court enforcement clerks by employing improved case management methods, clearing as many cases as possible until the backlog is effectively eliminated. The expected results of backlog reduction activities should result in improvements to the World Bank Doing Business "Enforcing Contracts" (number of days to enforce a claim) sub-indicator, as well as improving court performance and, concurrent with the establishment of the new enforcement system, lead to an overall improvement in private sector expectations that contract claims will be upheld by the courts.

A.I.1: Establish with KJC clear goals and targets for the complete reduction of backlogged enforcement cases in the Kosovo court system.

CLE will develop together with the KJC and KJC Secretariat clear goals and targets for the virtually complete reduction of backlogged enforcement cases in the Kosovo court system. The establishment of clear goals and targets for backlog reduction will be achieved by participation in the KJC's newly (re-formed/re-established) Backlog Reduction Working Group, which is tasked with developing an overall strategy for reducing court backlogs, including for execution cases.

Expected Result: Development of meaningful, achievable, and realistic yet aggressive targets will be established by the end of September 2013. Establishing targets is anticipated to yield an overall 15% reduction of backlog by the end of year one. This activity is connected to CLE PMEP IR 1.1 (1); 1.1.3(3); 2.1(2); 2.1.1(1) and 2.1.1(2).

Resources: CLE Resources.

A.I.2: Assist KJC to improve systems for statistics related to execution caseload.

CLE will participate in the KJC backlog reduction group, and provide support to the KJC secretariat, especially with the KJC Statistical Department, and individual courts to improve statistical analysis and reporting.

Achieving improved statistical reporting will require both analysis of available data, current work flow for collecting and reporting the data, and an assessment of IT infrastructure. Close coordination with EROL development of a case registry (database) and the eventual development of a case management information system (CMIS) for enforcement to facilitate CLE support to the Courts and, eventually, provision to the Chamber of Private Enforcement Agents will be required. It is likely that CLE will need to develop software modules (to supplement the EROL Registry) that isolate data and generates reports on execution cases, in addition to other features.

Expected Result: Analysis of current systems and development of additional systems (including software) should be completed by the end of December, with testing and evaluation to be

completed by March in order to begin utilization of new statistical reporting systems for 2014. This activity is connected to CLE PMEP IR 1.1(2); and 1.1.1(1).

Resources: Commodities: procurement of IT infrastructure (Servers) $5,000.00
Programming: Software development on open source (.php and MySQL) software platforms USN STTA TBD $14,000.00.

A.I.3: Support Basic Courts with Backlog Reduction Activities.

The SEAD developed database of execution cases has been migrated to the EROL developed electronic registry (database), but this system is not ready for general use. CLE will develop software modules to supplement this system with a graphic user interface enabling utilization of the Central Bank Registry of Account Holders and also accessing the Tax Administration database of employers/employees, generating forms, etc. During the first, second, and third quarters of Year One, while these IT issues are assessed and developed, CLE's focus in backlog reduction efforts will be to emphasize, first, implementation of the KJC Instruction issued in 2012 on the identification and archiving of civil judgments based on criminal fines which have passed the statute of limitations. Using the existing SEAD database and categorizing cases filed since SEAD closed during this process will ensure that the EROL Registry and/or CMIS eventually contain complete and current information on execution cases.

CLE will categorize cases in Gjilan Basic Court, then move to Ferizaj Basic Court, and then finally, by the end of year one will have started the process in Peja Basic Court.

Expected Result: At the conclusion of CLE support to each Basic Court, backlog will be effectively eliminated, with only current inventory and very problematic, complex, or temporarily unenforceable backlogged cases remaining on the dockets of the Basic Court execution staff. This activity will impact the World Bank Doing Business Enforcing Contracts indicator; the activity is connected to CLE PMEP IR 1.1(1); 1.1(2); 1.1.1(1); 1.1.3(3); 2.1(1); 2.1(2); and 2.1.1(1).

Resources: TBD – purchase of netbook computers for court clerks to streamline field execution operations (if necessary based on IT survey of CLE supported Basic Courts) up to $16,500. STTA concurrent with Activity A.I.2 above.

A.I.4: Support KJC and Basic Courts to improve performance of court enforcement clerks.

CLE will assist the KJC to set achievable backlog reduction targets and ensure that enforcement personnel performance evaluation is tied to achieving these targets. We will work with the KJC Secretariat to ensure that enforcement personnel change their longtime enforcement practices of "field execution" and instead focus initially upon utilizing the CBK Registry of Account Holders and TAK employer data to seize what are usually the most readily available assets, rather than continue the current inefficient practices of seeking movable property. CLE will begin institutionalizing these practices in the Gjilan Basic Court. As court personnel and commercial banks grow more accustomed to the approach and the system becomes more reliable, we will expand to two other courts, to be selected in cooperation with the KJC, probably Ferizaj and commencement in Peja in Year One.

CLE will emphasize implementation of the SEAD developed chapter to the KJC's Court Operations Manual. This Standard Operating Procedure will be reviewed in conjunction with KJC during the first quarter, and changed as necessary (e.g. to reflect the new organization of the courts). KJC HR Departments, Basic Court staff, and enforcement clerks will be trained on the revised SOP in the second quarter, or at the start of the third quarter. Following revision and training, CLE will support KJC and Court staff to ensure a system of performance evaluation for enforcement clerks is in place, with particular emphasis on following the SOP and meeting targets for case clearance.

Expected Result: Basic Court enforcement personnel (judges and execution clerks) will perform to standards set by and in accordance with SOP, with increased priority on enforcement against bank accounts and wages replacing current inefficient "field" execution (seizure and auction of movable property). This activity is connected to CLE PMEP IR 1.1(2); 1.1.1(1); 1.1.3(3); 2.1(1); 2.1(2); 2.1.1(1); and 2.1.1(2).

Resources: CLE resources only, as clerks (and execution judges) will be trained on the SOP in each individual court where CLE is working. By end of Project, each Basic Court's enforcement personnel will have received extensive "on the job" training facilitated by the CLE Backlog Reduction team.

A.I.5: Utilizing improved methods and information resources to improve enforcement against bank accounts and earnings.

CLE will use newly developed facilities within the Central Bank of Kosovo and the Tax Administration to greatly increase the effectiveness of levies against cash assets held within the banking system and against earned income for workers, including wages and salaries. Developing these mechanisms and negotiating their structure with the respective government agencies consumed considerable time under SEAD, and as a result these resources were only beginning to be used in the BRI when SEAD ended.

These facilities have great potential to increase the speed and effectiveness of enforcement methods, as garnishment against both earnings and bank assets are used with great effectiveness in numerous other countries in the region and internationally. That these methods were not available in Kosovo until recently is one important factor that contributed to the enforcement backlog.

Expected Result: This effort will be concurrent, as noted above, with implementation of the KJC Instruction on criminal fines cases (see A.I.3) in Gjilan, Ferizaj, and, time permitting in Peja Basic Court in Year One. CLE's staff database manager will develop a software module to enable court personnel to utilize the court file database and cross reference it with the CBK registry to make collections against matching bank accounts. Focusing on enforcement against cash and wages will dramatically increase efficiency by reducing the amount of time spent in contact with debtors and in the management and disposition of seized movable assets. Pulling a judgment debtor's account number(s) from the registry and enforcing directly and immediately against cash in the bank is considerably less labor intensive and logistically challenging than traveling to the debtor in person. As noted above, we will work with the KJC to effectively exploit the court file database to improve its statistical reporting on enforcement performance. This activity is connected to CLE PMEP IR 1.1(1); 1.1(2); 1.1.1(1); 1.1.3(3); 2.1(1); 2.1(2); 2.1.1(1) and 2.1.1(2).

Resources: CLE resources; STTA concurrent with Activity A.I.2 and A.I.3 above.

A.I.6: Improving enforcement mechanisms related to movable property

Enforcement against bank accounts and wages is not possible in all cases and in those cases where it is not, action against movable property may be the most effective available method of recovery. To increase the efficiency of enforcement against movable property, we will work with the KJC to coordinate the efforts of court enforcement personnel with AMSCA, as appropriate. Although the law establishing this agency was adopted in 2010, implementation by the MoJ has been slow, and AMSCA is currently being assisted in development of its rules by an EU project.

We will work with AMSCA, the KJC, and other interested counterparts and partners to improve communication between AMSCA and the courts, and to ensure the AMSCA is able to efficiently and transparently perform its work. This will require developing and improving processes for coordination and joint efforts among these institutions. At a minimum, ensuring the seamless integration of information between AMSCA and court enforcement personnel (and private enforcement agents, when operational), and ensuring the transparency and accountability, as well as the efficiency, of this joint effort will require the development of a publicly accessible centralized registry of seized assets, and transparent auction procedures. Frequently, seized assets are subject to a security interest and the system for recording pledges has been dysfunctional for some time. Therefore, auction procedures must include a mandatory period of notice prior to auction to enable lien holders to assert their rights and interests in property seized and held for auction.

Expected Result: Integration of information on movable property into CLE database; transparent auction procedures; improved communication between AMSCA, Courts, Private Enforcement Agents (when operational). This activity is connected to CLE PMEP IR 1.1(1); 1.1(2); 1.1.1(1); 1.1.3(3); 2.1(1); and 2.1(2).

Resources: CLE resources; Purchase Order for Kosovo Partner legal organization (TBD after consultation with USAID, AMSCA, and EU Project, etc.) up to $10,500.

A.I.7: Streamlined procedures for management and dismissal of cases

KJC and Supreme Court leadership (and almost certainly USAID) support will be needed to ensure that legal procedures are fully utilized for the dismissal or archiving of judgments that are simply uncollectable. One lesson learned in implementing the SEAD Program was that trial and appellate courts are frequently unwilling to exercise their discretion to dismiss uncollectable civil judgments (and criminal fines), for a variety of reasons (including potential appearances of conflict of interest, allegations of corruption, fear of reversal by superior courts, etc.). When civil cases are clearly uncollectable due to the inability to locate a debtor, when a debtor is deceased, or when a debtor is destitute, these cases should be dismissed. There is no practical utility to the courts to continue to attempt to enforce, and judgment creditors are unable to write these assets off as bad debts. We will work with the leadership of the KJC and the Supreme Court to ensure that appropriate instructions for decisions are developed that

support judges' use of the discretion available to them in law to dismiss or otherwise dispose of these cases.

Expected Result: Development of Software modules to facilitate isolation of cases appropriate for dismissal; dismissal by courts of these cases. This activity is connected to CLE PMEP IR 1.1(1); 1.1(2); 1.1.1(1); 1.1.3(3); 2.1(1); 2.1(2); and 2.1.1(1).

Resources: CLE resources; STTA concurrent with activity A.I.2 above.

A.II Establish the New Enforcement System

The Law on Enforcement Procedure was passed in December 2012 and, while most aspects of enforcement procedure are covered in the new legislation, there are many elements relating to the new institutions of enforcement that will require significant development after enactment. The legislation calls for the drafting a large number of new regulations determining many aspects of the new profession of private enforcement agents. The regulations to be developed include training, selection, assignment, liability, number of agents, fees, operating rules, reporting requirements, and permitted and mandated economic activities. A variety of governmental and quasi-governmental institutions must be created and move quickly into operation. The legislation requires the creation of a Chamber of Private Enforcement Agents, organizing, regulating, and requiring the joint action of a profession that does not now exist. The inspection regime for the performance of enforcement agents must be fully functioning and effective on the day the profession gains its first active members. New procedures in and out of court are to be implemented, and the basic mechanisms of enforcement are themselves being radically upgraded. The law also establishes a rapid agenda for the enactment of secondary legislation.

In order for the first group of private enforcement agents to assume their duties, they must undergo extensive training and formulate business plans. There is a natural progression of activities that must occur, and the experience of other countries in the region that have gone through similar situations will provide significant guidance in dealing with these challenges.

A.II.1: Develop with MoJ secondary legislation for new enforcement system.

The Law on Enforcement Procedure calls for drafting a large number of new regulations that will determine many aspects of the new profession of private enforcement agents. The regulations include training, selection, assignment, liability, establishing the number of agents, fees, operating rules, reporting requirements, and permitted and mandated economic activities. A variety of governmental and quasi-governmental institutions must be created and move quickly into operation. The total number of sub-normative acts required is 23. (2 of these 23 are optional and may not be passed.) Some of these acts may be merged into single Acts due to similarities of the matters they regulate.

Expected Result: Development and promulgation by MOJ of secondary regulations necessary to implement the LEP and establish the Private Enforcement Agents Regime. This activity is connected to CLE PMEP IR 2.1(1); 2.1.1(3); 2.1.2(1).

Resources: CLE resources; CCN STTA $7,500.00.

A.II.2: Conduct training for Private Enforcement Agents.

Training of MoJ personnel and private enforcement agents will be a continuous process that will be coordinated by the MoJ and Chamber (when established) but will be closely supported by CLE. Trainings are expected to start right after the appointment of the first agents and will go through the end of the Year One (at least). We anticipate training will occur during October – December, however, this forecast anticipates successful and timely examination, and granting of Licenses by MOJ, by October 15.

Expected Result: Private Enforcement Agents are trained. This activity is connected to CLE PMEP IR 1.1.2(1); 1.1.2(2); 1.1.2(3); 1.1.3(3); and 2.1.2(2).

Resources: STTA Dr. Peter Kahn, Katalin Popov (TBD), Zlaty Mihailova (TBD), $65,000.00; Sept.-Dec. 2103 plus subsequent STTA TBD in Spring 2014; (concurrent with A.II.3: "Establish Chamber of Private Enforcement Agents)." Training venues, etc. up to $5,000.

A.II.3: Establish Chamber of Private Enforcement Agents

Support will be provided to establish the Chamber through development of sub-normative acts the Statute of Chamber after private enforcement agents are licensed, provide materials and organizational support, etc. The Chamber will serve, once established, as the self-regulating organization of the Profession with an active role in advertising services, communicating lessons learned from practice to members (and the MOJ), and policing the practice of the profession. Under the LEP, the MOJ serves in substitute for the Chamber until a sufficient number of PEA's are licensed, and able to form the Chamber. As such, this activity will commence separate from and after the development and promulgation of the secondary regulations in A.I.1 above.

Expected Result: Chamber of Private Enforcement Agents established.

Resources: STTA Dr. Peter Kahn, Katalin Popov (TBD), Zlaty Mihailova (TBD), Sept.-Dec. 2103; Spring 2014 (TBD) (also concurrent with A.II.2: "Conduct Training for Private Enforcement Agents."

B. Development of the Contract/Commercial Law Framework and Systems, Improvement of Contract Enforcement Systems and Functioning of ADR Mechanisms

CLE commercial law framework activities require a systematic, holistic approach to addressing weaknesses in the commercial law framework, while also improving the quality of, increasing the demand for, mediation services, making greater legal information available to the private sector, and directly engaging with the business community to foster a greater "Culture of Contract." In developing legislation, we will continue to employ the transparent collaborative process, supported by analysis and opinion research, which proved effective under SEAD in developing the Law on Obligations. Full implementation of the Law on Obligations, by drafting necessary secondary regulations, will be a top priority.

Our approach to addressing gaps and inconsistencies in the legal framework that inhibit commercial activities and impede economic growth and job creation has two major elements.

First, we will work with the MoJ and other affected government counterparts to undertake a review of the commercial law framework, to identify what needs to be changed (i.e., clearly contradictory provisions in laws) and to illustrate the need for change by exposing inconsistencies. Second, we will conduct research, including the use of a survey to focus on gender issues with commerce, with additional focus groups, and roundtables with interested groups and business associations, all of which are directed at involving representatives of other groups (with particular care given to including women's groups) in the process, to ensure that stakeholders' perspectives are taken into account and reflected in the process of identifying the most problematic laws.

CLE will work on several aspects of the Contract/Commercial law framework. First, CLE will draft the regulations implementing the Law on Obligations. Second, and concurrently, CLE will conduct a review of the existing commercial law framework and develop recommendations for a legislative drafting schedule going forward. Additionally, CLE will work with the MoJ to develop buy-in for a new bankruptcy law, and then support drafting the law.

While SEAD interventions in mediation are beginning to have an effect there is more work to be done to establish international standard mediation in Kosovo. We coordinate closely with the Mediation Commission on its planned amendments to the 2008 Law on Mediation (and attendant revision of the secondary legislation required by that law). Finally, we will work to expand the availability of mediation, providing training to increase the number and improve the professional skills of mediators, and in Year One establish an additional mediation center in consultation with USAID (given recent other donor initiatives, it may be decided that there is no longer a need, or in the alternative, consultation with USAID to determine *where* to establish an additional center will be necessary).

Lastly, CLE will also develop legal information materials, including new standardized form contracts and "Know Your Rights" brochures to combat misperception, misunderstanding, and a low level of general awareness of legal rules among business. These information materials, coupled with direct engagement with the business community on more regularly using well negotiated and understood written contracts in their normal course of business will be geared to increasing a greater culture of contract. This effort will include roundtables with business associations and targeted business, and direct engagement with select businesses that are key leverage points within particular value chains (e.g. large distributors with numerous upstream and downstream partners), and women-owned businesses.

B.I. Development of the Contract/Commercial Law Framework and Systems

A weak legislative framework that is difficult for businesses to implement is exacerbated by a cultural tradition of relying on a handshake deal; as such, Kosovo businesses lack the "culture of contract" that characterizes modern transactional commercial practice.

This weak commercial law framework not only inhibits inculcation of a culture of contract in private behavior, but also poses difficulties for the courts, which must apply the same law in adjudicating contract disputes. Businesses' proclivity to adhere to traditional "handshake" contracting practices makes it even more difficult for judges who not only must try to make sense of the law, but also must make do with less reliable evidence than a written contract would provide. This naturally extends the time required to adjudicate a contract dispute. Further, without a written contract containing clauses invoking some form of ADR, dispute resolution options are limited to long stretches in the courts followed by long stretches awaiting enforcement of a judgment, or not filing a dispute at all and just walking away from a deal gone wrong. These conditions in the aggregate motivate businesses to minimize their risks by limiting

transactions to those with known partners, which in turn reduces the opportunity to find the best prices potentially available from a wider universe of possible partners, or causes them to forego some business activities altogether. Foreign investors know of these conditions too, making Kosovo a less attractive destination for investment. The net result is a difficult business environment, slowed economic growth, and reduced job creation at a time when the opposite is desperately needed to accommodate the demographic pressures of a young population about to reach or having just reached working age. A weak commercial law framework also undermines faith and confidence in government to provide a growth-friendly environment, rich with opportunities for employment, and trust in the courts to resolve private disputes. The quality of the rules businesses use to engage in self-executing transactions – those countless deals that happen daily and never wind up in court – plays a tremendous role in robust economic growth. When rules are coherent, are applied uniformly, are consistently and effectively enforced, and provide optimal flexibility to operate within the ever-changing dynamic of private sector economic activities, business deals are less likely to wind up in dispute. And when they do, the effectiveness of dispute resolution institutions – hopefully the last resort for businesses – depends on high-quality rules free from ambiguity and conflicting provisions.

A good foundation for harmonizing and refining the commercial law framework is already in place in the form of Kosovo's new contract (and tort) law, the Law on Obligations, which was drafted with support from the SEAD Program, was adopted last year, and which entered into force in December. Full implementation of this new law will require additional regulatory instruments, particularly with regard to consumer lending and other financial services, as well as continued education on the law for the business community, judges, lawyers, and others, coupled with focused public education and outreach.

B.I.1: Implement the Law on Obligations

Full implementation of the new Law on Obligations will require drafting and promulgating secondary regulations, particularly those associated with financial services, including consumer lending and possibly insurance. CLE is working with the MoJ, CBK, and affected private sector actors (particularly commercial banks) to develop this secondary legislation for promulgation. We will concurrently develop general legal information materials on the regulations, along with training materials for affected institutions (as needed), with the benchmark for fully implementing the Law on Obligations by the conclusion of Year One.

Expected result: A complete set of secondary regulations for the Law on Obligations, along with general legal information and training materials is developed and promulgated. This activity is connected to CLE PMEP IR 1.1.3(1) and 2.1.2(1).

Resources: CLE resources; potential purchase order with Kosovo legal services company partner, up to $10,500.

B.I.2: Review of the commercial law framework and development of a legislative drafting schedule.

CLE will work with the MoJ and other government counterparts to undertake a comprehensive review of the commercial law framework, to identify what needs to be changed (i.e., clearly contradictory provisions in laws) and to illustrate the need for change by exposing inconsistencies, gaps, outdated institutions or principles, and clear conflicts between laws. This review will include laws and a regulation governing the registration of disposition of property

rights, as this issue affects the enforcement of judgments. It will also cover problems with enforcement in real property cases that arise out of the text of the law, and areas of the law that negatively impact on women and minorities, including the ability of women to register and utilize both real and movable property for business/commercial purposes.

Expected Result: A completed matrix review of the existing commercial law framework. This activity is connected to CLE PMEP IR 1.1.3(1) and 2.1.2(1).

Resources: CLE resources.

B.I.3: Develop Amendments to the Law on Contested Procedures

Revising the Law on Contested Procedures has been under discussion for some time in Kosovo. In particular, there is a need to make certain types of case dismissal mandatory instead of optional. Assuming that needed GOK support is obtained, CLE will support efforts to develop targeted and small scale amendments to this law, specifically an amendment relating to dismissal and other disposition of enforcement cases. Our experience in SEAD revealed that judges are unwilling to utilize the discretion afforded them in the LCP, so we would seek to eliminate this discretion to make dismissal of certain very narrowly defined cases (uncollectable due to deceased or destitute judgment debtors) mandatory.

Expected result: If amended, the LCP makes dismissal of certain cases mandatory instead of discretionary. This activity is connected to CLE PMEP IR 1.1.3(1) and 2.1.2(1).

Resources: CLE resources.

B.I.4: New Bankruptcy law

A firm basis establishing the need for revision of the bankruptcy law already exists, based on reports from the World Bank ROSC (2012) and the IFC (2013). Local counterparts have already agreed in principle that a revision is desirable. However, at this time the Ministry of Justice has not formally committed to a reform.

Given the current bankruptcy rules do not apply to the vast majority of businesses in Kosovo either a complete new bankruptcy law, or a separate law applicable to individuals and sole proprietors (the current law is applicable only to legal persons), is necessary. Additionally, analysis of the current bankruptcy rules reveals that there is little mechanism for reorganization of firms, instead essentially operating only to liquidate firms and ensure creditors are treated fairly. But this is a policy choice in law which does not provide a basis for firms to attempt to continue operating, with the attendant benefits of continued economic activity, and jobs.

CLE will work with the MoJ and other local stakeholders to develop an inter-ministerial working group, which will include members from the private sector, and we will then work to ensure stakeholder input into the drafting process.

Expected result: Working group formed by Ministry. Law placed on government's legislative calendar for 2014. Draft of new law will be substantially complete by the end of Calendar Year 2014 and submitted for Government (Inter-Ministerial) review and submission to the Assembly for adoption. This activity is connected to CLE PMEP IR 1.1.3(1) and 2.1.2(1).

Resources: CLE resources; STTA TBD - $11,500.00.

B.I.5: Legal information materials

Continued distribution of SEAD Standard Form Contracts: CLE will continue to distribute and to advocate the use of SEAD's legal information materials, and other outreach materials, including the Standard Form Contracts with accompanying legal commentary and layperson user's notes. Promoting these materials can lead to deeper and wider acceptance of a modern "culture of contract" while also arming businesses with written contract instruments to protect themselves and better distribute transactional risks.

The project will develop two new Standard Form Contracts in Year One, and will also revise existing ones, as needed. (For example, a new Construction Contract is already needed, due to recent revision of the Construction Law). In developing new standard forms, the project will emphasize contracts that will be widely used by particular sectors of the business community. Identification of subject matter will be based on evidence gathered in surveys, focus groups, and interviews with the business community.

To more broadly promote the use of written contracts and provide readier access to contract forms, user guides, and accompanying information materials, we will also develop and distribute smartphone applications, which businesspeople can easily access and use in the course of negotiating transactions.

The project will develop at least two sets of Know Your Rights materials. At least one of these will be for individual consumers who are debtors, informing them of their rights with regard to debt collection by private enforcement agents.

Expected result: Two Standard Form Contracts either drafted or revised. Smartphone applications developed and distributed. At least two sets of Know Your Rights materials developed, printed and distributed. This activity is connected to CLE PMEP IR 2.1(3).

Resources: Printing costs for Know Your Rights materials $5000. Development of smartphone apps $7,500. Revision of the Standard Construction Contract – STTA TBD $10,000.00.

B.II: Mediation

Two mediation centers were opened under the SEAD Program, one in Peja and the other in Gjilan. Mediation as a mechanism for dispute resolution was increasingly being used by the end of the SEAD Program. A SEAD-developed protocol on the referral by courts of cases to mediation was adopted and promulgated nationally by the KJC, and the courts have warmly embraced mediation. Hundreds of cases have been referred, and tens of cases already have been mediated with the consent of the parties, concluded, and recognized by the courts. Like arbitration, mediation is a new service in Kosovo, and will be sustainable only when the use of mediation services becomes institutionalized and woven into the dispute resolution framework. It is important to recognize that, generally speaking, mediation is a private service sustained by fees paid directly to mediators; therefore, its survival and growth, like that of arbitration, depend upon increased demand. Mediation centers, however, require a considerably larger volume of cases than arbitration centers to be fully sustainable, due to the lower costs of mediation. We will continue support for the Peja and Gjilan mediation centers under CLE, and will open of at least one more center, depending on need and in consultation with USAID.

CLE will support efforts by the MoJ's Mediation Commission to refine as necessary the regulations governing mediation and, if amendment to the 2008 Law on Mediation is pursued, will support this effort as well. It will be important to ensure that any amendments to the law are consistent with international standards and are conducive to the growth of the institutions.

CLE will continue to work with the courts to ensure the protocol on referral is being implemented and, as necessary, to refine the protocol with lessons learned from what is now a year of practice at these centers.

CLE will support the establishment of an Association of Mediators, a private organization formed to foster increased professionalism and to represent mediators and the practice of mediation with public institutions. This association has been mostly dormant without the institutional support it needs to grow into a robust organization whose role will largely mirror that of the Chamber of Enforcement Agents. This will not require any investment from CLE in infrastructure or personnel; rather, it will require support for training and organizational development, particularly with formulating ethical rules and codes of conduct, among other things.

Even though the use of mediation continues to grow "on its own" in Kosovo, arcing towards sustainability, this process is slow, and CLE will seek to effectively increase demand for mediation services through a two-pronged approach: 1) by building the capacity of the mediation centers with business planning and marketing assistance, and providing similar focused support to the nascent Association of Mediators; and 2) by incorporating Mediation as part of the Program's public education approach to promote broad acceptance and demand for mediation as a viable alternative to courts. Additionally, we will support more targeted outreach efforts in cooperation with counterpart institutions representing both government and business interests.

B.II.1: Develop mediation infrastructure

CLE will support the MoJ's Mediation Commission to refine the regulations governing mediation and other relevant secondary legislation, particularly the Regulation on Training and Certification and the Regulation on Grievance and Disciplinary procedures. If amendment of the 2008 Law on Mediation is pursued, we will ensure that any amendments to the law reflect international standards and are conducive to the growth of the institutions.

CLE will assist the MoJ/Mediation Commission in introducing amended and new secondary legislation to all licensed mediators, as well as to other competent institutions.

Expected Results: New regulations, particularly the Regulation on Training and Certification and the Regulation on Grievance and Disciplinary procedures. Association of Mediators established and operational. This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: CLE Resources.

B.II.2: Support and establish mediation centers, and continued implementation of KJC protocol on the Court referral of cases to mediation centers.

CLE will continue supporting the mediation centers in Peja and Gjilan, and will seek to extend the availability of mediation services in the Peja and Gjilan basic court branches. We shall also support the Mediation Commission efforts to expand mediation practices in Peja and Gjilan and in cooperation with the Mediation Commission, will offer mediation training for 30 new mediators. We will make all reasonable efforts to ensure that women are included among the new mediators. A TCN STTA in addition to CLE personnel will be used for mediator training.

Expected results: 30 newly trained mediators. This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: TCN STTA (October-November 2012) $15,000.00

B.II.3: Establish new Mediation Center TBD:

CLE will possibly open a new mediation center in one additional city, pending consultation with USAID. Although a new center is anticipated in the CLE Award Contract, new developments with other donors possibly opening other centers will require that CLE (and USAID) determine whether there is utility in doing so should UNDP, Partners Kosova (funded by the Turkish Embassy, or others fund a center or centers. The new center, if established, will offer mediation services for the local basic court and its branches.

Expected result: One new mediation center, fully functional at the end of Year One (TBD consultation with USAID). This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: CLE Resources (Office Operating Expenses for 6 months - $6,000.00)

B.II.4: Implementing the KJC Protocol on Court Referral of Cases to Mediation:

CLE will, in cooperation with KJC and the Mediation Commission, organize five roundtables in Year One to introduce the court protocol on referral of mediation to all basic courts in Kosovo (two basic courts already have operating referral systems, feeding cases to the CLE Mediation Centers in Gjilan and Peja). Court personnel will be instructed in the referral protocol and in the enforcement of mediation judgments.

Expected result: All Basic Courts will be familiar with the mediation protocol and will regularly refer cases to the appropriate Mediation Center. This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: Seven round tables at $500 each = $3,500.

B.II.5: Support to Mediation Association

Mediation Association: CLE will support the development and increased capacity of an Association of Mediators to facilitate planning and programming for activities that will lead to sustainability and an organization that can further develop mediation in Kosovo. CLE support the Association's continued organizational development, by helping formulate ethical rules and codes of conduct and assisting the Association to finalize its internal regulations and bylaws. The project will then provide training for the Association's executive committee/board and, potentially, its staff on business planning, marketing, budgeting and other management topics. This assistance will be designed to ensure that by the end of Year Two of the CLE project, the Association will be able to "stand alone" without additional support, while offering a full menu of services, including marketing, training, assistance with legal information and licensing requirements to mediators, and outreach to the public. The project will also work with the MoJ to ensure that there is continued government support for expanding the availability of mediation, particularly in those centers such as Prishtina, Ferizaj and Gjakova where mediation has not yet been successfully introduced.

The project will, together with the Association of Mediators, develop and present training materials in mediation and help the Association understand the scope of mediation and the critical issues in developing sustainable mediation in Kosovo.

Expected Result: Association established and fully operational; training materials are developed suitable for a complete training. This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: CLE resources; STTA for capacity development of Association - $10,000.00

B.II.6: Building Sustainability – ICC Mediation Moot Competition

CLE, in coordination with the Universities in Kosovo, shall support the mediation moot competition and the subsequent participation of the winning Kosovo student team at the International Chamber of Commerce Mediation Competition. STTA will be engaged to assist in establishing a National intramural Moot competition and in developing local competition rules.

Expected Result: There will be a National Intramural Moot Court Competition, which will result in a Kosovar team participating in the International Competition. The team will represent Kosovo at the international competition in Paris in February 2014. This activity is connected to CLE PMEP IR1.1.3(2).

Resources: $16,400. The project will aggressively explore possible co-financing of this activity in close cooperation with other institutions and donors such as MoJ, University of Prishtina, UNDP and GIZ. Organizational Support STTA (TBD) - $15,00.00

B.III: Training

SEAD developed and delivered ten fundamental continuing legal education courses for judges and advocates focusing on contract and commercial law. Under CLE, it will be vitally important that judges who are assigned to the new Commercial Matters Department at the Pristina Basic Court (some of whom have no commercial law background or experience), as well as Appellate Court judges handling commercial law cases and judges from the Supreme Court, to continue to receive specialized, advanced training on contract and commercial law principles. Additionally, and especially given the changing landscape of commercial laws and the new enforcement regime in Kosovo, it will be necessary to provide the same training to commercial lawyers, bank legal officers, and other legal professionals. It will also be critical to train judges and court personnel on the effective enforcement of arbitral awards and mediation agreements and the conventions established in the Protocol for Court Referred Mediation.

Before determining training needs and establishing training program priorities, we will interview judges to gather information that allows us to better understand their capacity, limitations, gaps in legal knowledge, caseload (including subject matter and complexity), and past training in commercial and contract law. CLE will receive KCA accreditation to teach mandatory continuing legal education (MCLE) courses to registered advocates. To promote the sustainability of specialized commercial law training programs within the KJI and KCA, and to engage other project counterparts and stakeholders, we will utilize project staff and/or recruit trainers who are well versed in the changes in law.

To measure the impact of judicial training, we will work with our subcontractor FTK to survey experienced commercial lawyers with active caseloads in the Commercial Matters Department and Court of Appeals regarding the knowledge and skill level of judges assigned to hear commercial cases. In addition to traditional survey methods, we will pilot an innovative and cost-effective program wherein commercial lawyers who have recently litigated claims in court are contacted and invited to complete confidential web-based survey forms to evaluate judges' performance and knowledge of commercial laws. The data generated from the surveys would not only provide feedback on training, but also would identify future training priorities and areas where gaps in knowledge and skills may exist.

B.III. 1: Improve the skills and knowledge of judges assigned to commercial departments of the Pristina Basic Court, Court of Appeals, and Special Chamber of the Supreme Court

CLE will develop a set of training programs and activities for judges and legal professionals. Before determining training needs and establishing training program priorities, we will interview judges and other legal professionals to gather information that allows us to better understand their capacity, limitations, gaps in legal knowledge, caseload (including subject matter and complexity), and past training in commercial and contract law. These interviews will take place in the second quarter of Year One.

Training for judges will be on commercial law topics, including but not limited to contracts, bankruptcy, creditors' rights, and the enforcement of debts. It will also be critical to train judges and court personnel on the effective enforcement of arbitral awards and mediation agreements, and the conventions established in the Protocol for Court Referred Mediation.

While judges from all levels of the court system will be addressed, there will be a particular emphasis on judges at the level of first instance, particularly the Pristina Basic Court, as this is where the all commercial cases are filed. Training will be conducted starting in the second quarter (utilizing SEAD developed training materials). In Year One, trainings will use the materials already developed by SEAD in 2011-12; development of new materials will be an ongoing activity in the third and fourth quarters, but it is not anticipated that these will be deployed until Year Two. It is foreseen that the program will offer at least one training session per month beginning in September 2013 (with exceptions in December-January, and August) and that the number of judge participants might vary from 15 to 25. We will compare costs of distributing training materials (and other information) to the judiciary on either low-cost e-reader devices or in hard copy, and will distribute materials on whichever media is most cost effective.

Expected Result: At least 100 judges trained in commercial law topics. This activity is connected to CLE PMEP IR 1.1.2(1); 1.1.2(2); 1.1.2(3); and 2.1.2(2).

Resources: $5,000 for development of new training materials and TCN STTA. $700 for venue costs (lunch, coffee, etc.). E-Reader or printing costs (TBD - $12,500.00).

Trainings for advocates will be on a range of commercial law topics. These trainings will use the existing CLE system, working through the Chamber of Advocates.

Expected Result: At least 300 advocates trained in commercial law topics. This activity is connected to CLE PMEP IR 1.1.2(1); 1.1.2(2); 1.1.2(3); and 2.1.2(2).

Resources: Estimated $5,000 for development of new training materials and TCN STTA.

To measure the impact of judicial training, the project will carry out one or more surveys beginning six months after the completion of the training. The survey subjects will be experienced commercial lawyers with active caseloads in the Commercial Matters Department and the Court of Appeals regarding the knowledge and skill levels of judges assigned to hear commercial cases. In addition to traditional survey methods, CLE will pilot an innovative and cost-effective program wherein commercial lawyers are contacted and invited to complete confidential web-based survey forms to evaluate judges' performance levels and knowledge of commercial laws.

Expected Result: Training has resulted in measurably improved Commercial Department Judges' skills.

Resources: Survey - $7,500.00.

B.III.2. Assessment of the LL.M. Program in Contract and Commercial Law

CLE will assess the implementation of the LL.M. Program in Contract and Commercial Law at the University of Pristina Law Faculty. This assessment will be undertaken by an experienced legal educator who also was instrumental in designing the LL.M. Program for SEAD.

Expected Result: Detailed written assessment, with recommendations, of LL.M. program. This activity is connected to CLE PMEP IR 1.1.2(3).

Resources: Projected cost of STTA Ted Parnall to conduct this assessment (September/October 2013) is approximately $11,500.

C. Outreach, Gender and Monitoring:

Understanding

As improved systems for enforcing judgments are instituted, contract and commercial laws are strengthened, and arbitral awards and mediation agreements are efficiently and effectively enforced, it will be of paramount importance that these reforms and the increased access to justice inherent in ADR systems are promoted to both the general public and the business community.

Approach

CLE will engage in a multi-faceted outreach and public education initiative aimed at: (1) increasing public confidence in judicial institutions and, in particular, the courts' ability to enforce court judgments; (2) increasing public awareness of the new private enforcement system; (3) increasing public awareness of, and benefits from, improved ADR processes; (4) ensuring that the business community is not only aware of legal reforms and more efficient mechanisms to resolve disputes through ADR, but also becomes more involved in advocating for additional reforms and reaping the rewards from these same reforms in their daily business practices; (5) promoting the use of written contracts to the business community; and (6) ensuring that public education and outreach initiatives are gender-sensitive (e.g., showing both men and women in leadership positions) and that they reach both men and women.

Outreach will be conducted through a variety of methods including traditional roundtables and conferences with relevant business sectors to discuss the impact of new laws affecting their operations. We will continue to involve various business associations across several sectors in keeping their members informed of reform developments, enabling them to plan accordingly. Outreach activities will also be closely coordinated with training; for example, the materials developed for training judges and lawyers will be made widely available through low cost channels such as the internet.

Where appropriate, reports (as well as the standard contract forms created under SEAD) will be published, distributed, and hosted on a website for public review and use. Digital media will be used to share information directly with Kosovar citizens that have internet access.

In order to educate the public and business community about the importance of contract enforcement and highlight the availability of ADR mechanisms, we will organize targeted, research-based outreach campaigns. We will be innovative and creative in reaching our target

audience through traditional media such as television and radio spots and print media, as well as through digital media, social networking and other ICT-based tools. At the outset of the Program, we will work with our local subcontractor, FTK, to design and conduct both public and stakeholder surveys to inform the overall campaign strategy. Our quantitative and qualitative research will gauge opinion, perceptions, knowledge, and preferred sources of information among stakeholders, while examining attitudes regarding the enforcement of judgment system, use of written contracts, and available arbitration and mediation mechanisms. The surveys will include specific questions to determine which CLE issues affect women's rights, allowing us to better design activities to strengthen those rights.

In addition to the activities proposed under Components 1 and 2 above, our cross-cutting initiatives will be critical in achieving an improved system for enforcement of judgments, reduction of backlogs, development of an effective contract and commercial law framework, improvement of contract enforcement systems, and sustainable ADR mechanisms. These initiatives will also provide opportunities to mainstream gender considerations throughout the Program as well as well as to support the USAID Forward reform agenda.

Together with our partner FTK, we will conduct opinion surveys to ascertain what businesses perceive to be the biggest impediments to the conduct of commerce. There is already a general awareness of the most problematic areas – including property, property registration, bankruptcy, and secured transactions. Legal analysis of the framework will identify the conflicts that exist between laws, but this research will be used to confirm or identify further areas for priority action.

We will organize, participate in, and facilitate an ongoing series of roundtables and discussions on commercial law topics. In the early stages of CLE, Checchi will organize and facilitate most of these dialogues, but in subsequent years we will encourage the Assembly, the GoK, and others to organize the discussions to inculcate a culture of dialogue, openness, and cooperation in commercial law development.

<u>C:I.1: Conduct Outreach on the New Enforcement System</u>

CLE's outreach activities will actively educate and inform on the establishment of the new Private Enforcement system. The outreach activities will rely heavily on event-driven news coverage through pre-event press briefings, press releases, arrangement of exclusive interviews on the evening news shows that night and the morning news shows next day, arrangement of exclusive print interviews in key sources.

CLE will use its information channels to communicate information on the establishment of the new Private Enforcement system to public. As part of a multi-faceted outreach and public education initiative, we will support MoJ in developing web-based outreach and radio and television PSAs on the new private enforcement system. Messaging will be developed and conducted concurrently with the establishment of the new system (October through December).

Expected Results: The public is more informed about the advent of the new system.

Resources: Development of television, radio, and web-based PSA's and media buying – approximately $10,000.00.

C:I.2: Conduct Outreach on Backlog Reduction

Concurrently with backlog reduction achievements, the Program will assist KJC in conducting outreach to promote improvements in access to justice. Outreach activities will rely heavily on news coverage through press briefings, press releases, arrangement of exclusive print interviews, and printing of informative leaflets/success story. The outreach will be launched by mid-January 2014 and will be ongoing throughout the rest of Year One.

Expected Result: CLE will support the KJC in developing and disseminating outreach materials to inform the public of achievements in the reduction of the enforcement judgment backlog.

Resources: Project Resources.

C.I.3: Conduct outreach with business community

CLE will work with the business community to develop a dialogue that for information exchange, receive feedback and learn how to integrate reforms in their daily operations. In this context, during year one, the Program will organize one roundtable per month with the various business sectors, to include agriculture, IT, real estate, construction, retail/wholesale - distribution, and producers. The aim of the roundtables is to increase public confidence in judicial institutions and, in particular, the courts' ability to enforce court judgments; increasing public awareness of the new private enforcement system; increasing public awareness of, and benefits from, improved ADR processes ensuring that the business community is not only aware of legal reforms and more efficient mechanisms to resolve disputes through ADR, but also becomes more involved in advocating for additional reforms; and promoting the use of written contracts to the business community. Special efforts will be made to ensure participation of women-owned businesses. Roundtables will be organized, whenever possible, in cooperation with other USAID, donor, and implementers' programs, and national NGOs including the Kosovo Chamber of Commerce and the American Chamber of Commerce (AmCham) in Kosovo.

Expected Result: Increased regular business use of written contracts; increased awareness of developments in courts, private enforcement regime; increased awareness and use of ADR (Mediation). At least 10 roundtables with business will be held in Year One. One national level conference, TBD, may also be held, depending on need as determined in consultation with USAID. This activity is connected to CLE PMEP IR 2.1(3).

Resources: Roundtable venues, coffee breaks, etc.: $9,850.00. Conference (TBD): $10,000.00

C.I.3: Monitoring, Evaluation, and evidence gathering to inform CLE Activities - Establish baselines

CLE will work with its local subcontractor, FTK, to carry developing program M&E baselines utilizing focus groups. This effort will result in quantitative and qualitative research that will gauge opinion, perceptions, knowledge, and preferred sources of information among stakeholders, while examining attitudes regarding the enforcement of judgments system, use of written contracts, views of arbitration and mediation mechanisms, and the effectiveness of the

SEAD media campaign. Focus groups will cover specific questions to determine which CLE issues affect women's rights, allowing us to better design activities to strengthen those rights.

Expected Result: The baseline survey will be designed and conducted during the second quarter (August-October); draft results are expected to be received by the end of September. This activity is connected to CLE PMEP IR 2.1(3).

Resources: Project Resources; conduct of focus groups $5,000.00.

C.I.4: Prepare CLE Gender Analysis and Action Plan

CLE, with subcontractor dTS, will build gender awareness, balance and empowerment into CLE activities. Gender balance will receive special emphasis when we consider the formation of working groups, roundtable discussions, stakeholder buy-in, trainers and training participants, and arbitrator and mediator selection criteria. Working with nascent counterpart organizations such as the Chamber of Enforcement Agents on planning and staffing needs will provide CLE with ideal opportunities to engage counterparts on gender issues and help them develop empowerment policies and practices that meet international standards. When developing new legislation, particularly legislation affecting business and property registration, we will pay particular attention to the protection of women's rights to property. Moreover, we will ensure that gender considerations, including gender-awareness training for men and women, are incorporated into relevant training curricula. The hallmarks of the CLE approach will be mainstreaming gender into all CLE activities, monitoring the benefits and challenges related to Program initiatives by gender, and strengthening training and capacity building to ensure that both men and women have access to information and reap the benefits of Program initiatives.

To identify current gaps and potential opportunities for making Kosovo's enforcement of judgment systems and commercial law framework more inclusive and gender-equitable, CLE will prepare a *CLE Gender Analysis and Action Plan*. Recommendations from the analysis will provide guidance and operational input into the program's overall work. Specifically, the gender analysis will include an examination of the opportunities and limitations that both men and women have for participation and decision-making within the CLE program. Gender-related differences in roles, responsibilities, resources, and power in society will be determined and articulated. The action plan will provide a roadmap of steps the CLE will take to help overcome identified barriers (i.e. barriers keeping women from inheriting land and registering small businesses) and develop specific interventions for both men and women to include in overall program activities. In addition CLE will seek avenues to reach local women through organizations such as the KWCC and the Innovation Centre Kosovo's Wominnovation network, to provide training opportunities targeted at women-owned businesses and women entrepreneurs designed to increase their knowledge about the availability and use of standard form contracts, the availability of ADR mechanisms, writing business plans, the "nuts and bolts" of business registration, and other relevant commercial law topics.

Expected Result: CLE Gender Action Plan developed jointly with subcontractor dTS' gender expert, and its recommendations, where applicable to CLE, are integrated into all Program activities; the Action Plan will also inform the final development of the CLE Nationwide Survey on Women and Commerce, which will be conducted together with its local subcontractor FTK to identify problems encountered by women in commerce and relating to the registration, transfer, and use of business property.

Resources: STTA Ms. Danka Rapic $15,000.00.

C.I.5: CLE Nationwide Survey on Women and Commerce

A commonly raised issue is that Kosovar women have traditionally been in a disadvantageous position in comparison to men in all spheres of society. Lack of political will and the traditional mentality have both been identified as major obstacles for functionalizing and implementing gender-related legislation. Although the legal framework for gender equality is good, the implementation of laws is widely considered, at least anecdotally, to be problematic. The position of women has improved and gender equality has made progress; however, there is still work to be done in order to mainstream gender in all aspects of the society. While Kosovo continues to make progress in the area of gender and women's rights, it is a widely held view that women still face many difficulties related to the ownership and registration of property, inheritance rights, and ownership in businesses. However, notwithstanding several reports and analyses of these issues, the *specific* areas of law and practice where targeted interventions – either in redrafted legislation or regulations, or through training, observation and monitoring, and "know your rights" campaigns – can make a difference remain unidentified. The intention of the CLE Nationwide Survey on Women and Commerce will seek, through a broad based nationwide survey is to identify those areas where targeted interventions may result in immediate impact, and more fully inform analysis of problems encountered by women vis-à-vis property and commerce.

Expected Result: The survey results more fully explicate problem areas, and inform both CLE and broader USAID strategic planning and interventions. CLE will work on developing and publishing "Know Your Rights" materials that include basic rights and solutions when women encounter problems with property and commerce that arise from a misapplication of law or practice. These will be based on our survey findings. It is expected that they will include, but not be limited to, materials on women's rights in the legal system, including the rights to own, register and transfer property, and how to enforce those rights. The first brochure is planned to be published in January 2014.

Resources: Survey cost - $22,000.00. In the event that the survey results are sufficiently informative, this may also constitute the basis for a conference on Women and Commerce. Conference (TBD): $10,000.00

C.I.6: Outreach on Mediation

Businesses will not readily change their contracting practices until they are convinced of the merits of employing written contracts generally. This is particularly true with the need to invoke ADR in advance of a dispute arising – i.e., at the moment of entering into a contract. This is especially true for Arbitration, but also can be an issue in Mediation. Further, although awareness of the availability of Mediation is growing, there remains insufficient awareness, and therefore insufficient demand, for Mediation services. CLE will utilize public education and outreach resources, including media, publications in local newsletters and business magazines, and regional business roundtables to make businesses aware of the value of contracts and ADR, promulgate and increase the usage of Standard Form Contracts containing ADR clauses; and widely advertising the successes of businesses that use ADR.

Expected Result: Increasing awareness and demand for Mediation (and other ADR) services. This activity is connected to CLE PMEP IR 1.1.3(2).

Resources: Project resources; Development of television, radio, and web-based PSA's and media buying – approximately $10,000.00.

Additional – Institutional Capacity Building for USAID Forward Partner Arbitration Tribunals (AmCham ADR Center and KCC Permanent Tribunal for Arbitration (PTA).

As part of USAID Forward, USAID/Kosovo will undertake activities independent of CLE to support achievement of the above goals. USAID plans to make up to three direct awards to support the reduction in the backlog to support the strengthening of Arbitration services through training, improving case management systems, and reaching out to the business community.

The possibility for more direct awards will be considered throughout implementation of the CLE program. Direct awards of USAID funds to selected organizations aim at increasing their capacity and ownership over the new processes. The CLE implementer is expected to work closely with USAID as well as the selected organizations in order to assist with the achievement of the program goals through the CLE contractor's advice and capacity building during their implementation of the USAID direct award.

In accordance with Section C.8 of the CLE Award, the CLE COP, Legal Specialists, and Finance and Administration Manager, supplemented by Checchi Home Office Personnel, will assist these USAID Forward partners with developing absorption capacity to properly manage and account for USAID Forward funding under the applicable US Law. This activity will involve preparation of internal policies and procedures compliant with the US Code of Federal Regulations, OMB circulars, USAID implementing regulations and Administrative Directives, and Kosovo Law covering procurement, human resources management, accounting procedures, and finance management. CLE and Checchi Home Office personnel will assist the partners to develop and document internal policies and procedures manuals, conduct training for organization staff, and will assist the organizations to prepare for audits.

Expected Result: USAID Forward partner organizations are compliant with requirements.

Resources: Project staff resources; Checchi and Company Consulting, Inc. Home Office personnel: James Agee, Alice Gillispie, Jaline Lees, and Justine Dodgen STTA TBD; up to $35,000.00.